

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF RICHLAND)

3

4

* * * * *

5

JUDICIAL MERIT SELECTION COMMISSION

6

TRANSCRIPT OF PUBLIC HEARINGS

7

* * * * *

8

BEFORE: SENATOR GEORGE E. CAMPSSEN, III, CHAIRMAN

9

REPRESENTATIVE BRUCE W. BANNISTER, VICE-CHAIRMAN

10

SENATOR GERALD MALLOY

11

SENATOR GREG HEMBREE

12

REPRESENTATIVE MURRELL SMITH

13

REPRESENTATIVE J. TODD RUTHERFORD

14

KRISTIAN C. BELL

15

MICHAEL HITCHCOCK

16

JOSHUA HOWARD

17

ANDREW N. SAFRAN

18

ELIZABETH H. BROGDON, CHIEF COUNSEL

19

* * * * *

20

DATE: November 16th, 2016

21

TIME: 9:30 a.m.

22

LOCATION: Gressette Building

23

1101 Pendleton Street

24

Columbia, South Carolina 29201

25

REPORTED BY: PATRICIA G. BACHAND, COURT REPORTER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

PAGE:

THE HONORABLE PAUL EDGAR SHORT, JR..... 7
- Examination by Ms. Benson..... 9
THE HONORABLE HARRIS BRUCE WILLIAMS..... 14
- Examination by Mr. Cohl..... 16
BLAKE ALEXANDER HEWITT..... 21
- Examination by Mr. Davidson..... 23
- Examination by Senator Malloy..... 31
- Examination by Representative Smith..... 38
- Examination by Mr. Hitchcock..... 42
- Reexamination by Senator Malloy..... 46
- Examination by Representative Rutherford..... 48
- Examination by Mr. Safran..... 49
- Examination by Senator Campsen..... 52
- Reexamination by Mr. Safran..... 55
- Examination by Mr. Howard..... 59
THE HONORABLE DAVID GARRISON HILL..... 63
- Examination by Ms. Brogdon..... 65
- Examination by Representative Smith..... 75
- Examination by Mr. Safran..... 76
JON RENE JOSEY..... 80
- Examination by Mr. Davidson..... 83
- Examination by Senator Campsen..... 91

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PAGE:

THE HONORABLE ALISON RENEE LEE..... 93

- Examination by Mr. Gentry..... 95

- Examination by Senator Hembree..... 105

- Examination by Mr. Howard..... 113

- Examination by Senator Campsen..... 115

GRACE GILCHRIST KNIE..... 125

- Examination by Ms. Dean..... 128

- Examination by Senator Malloy..... 140

- Examination by Representative Smith..... 141

- Examination by Representative Rutherford..... 144

THE HONORABLE JAMES DONALD WILLINGHAM, II..... 147

- Examination by Ms. Brogdon..... 150

- Examination by Senator Malloy..... 159

- Examination by Representative Rutherford..... 167

- Examination by Mr. Safran..... 168

- Examination by Representative Smith..... 172

THE HONORABLE RALPH K. "TRIPP" ANDERSON..... 178

- Examination by Ms. Brogdon..... 179

Certificate of Reporter..... 186

Word Index

* * * * *

REQUESTED INFORMATION INDEX

(No Information Requested.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

* * * * *

EXHIBIT INDEX

EXHIBITS:	PAGE:
EXHIBIT NO. 1.....	8
- JUDICIAL MERIT SELECTION COMMISSION PERSONAL DATA	
QUESTIONNAIRE OF THE HONORABLE PAUL EDGAR SHORT, JR.	
EXHIBIT NO. 2.....	8
- JUDICIAL MERIT SELECTION COMMISSION SWORN STATEMENT	
OF THE HONORABLE PAUL EDGAR SHORT, JR.	
EXHIBIT NO. 1.....	15
- JUDICIAL MERIT SELECTION COMMISSION PERSONAL DATA	
QUESTIONNAIRE OF THE HONORABLE HARRIS BRUCE WILLIAMS	
EXHIBIT NO. 2.....	15
- JUDICIAL MERIT SELECTION COMMISSION SWORN STATEMENT	
OF THE HONORABLE HARRIS BRUCE WILLIAMS	
EXHIBIT NO. 1.....	22
- JUDICIAL MERIT SELECTION COMMISSION PERSONAL DATA	
QUESTIONNAIRE OF BLAKE ALEXANDER HEWITT	
EXHIBIT NO. 2.....	22
- JUDICIAL MERIT SELECTION COMMISSION PERSONAL DATA	
QUESTIONNAIRE AMENDMENT OF BLAKE ALEXANDER HEWITT	
EXHIBIT NO. 3.....	22
- JUDICIAL MERIT SELECTION COMMISSION SWORN STATEMENT	
OF BLAKE ALEXANDER HEWITT	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBIT INDEX (CONTINUED)

EXHIBITS:	PAGE:
EXHIBIT NO. 1.....	63
- JUDICIAL MERIT SELECTION COMMISSION PERSONAL DATA QUESTIONNAIRE OF DAVID GARRISON HILL	
EXHIBIT NO. 2.....	64
- JUDICIAL MERIT SELECTION COMMISSION SWORN STATEMENT OF DAVID GARRISON HILL	
EXHIBIT NO. 1.....	81
- JUDICIAL MERIT SELECTION COMMISSION PERSONAL DATA QUESTIONNAIRE OF JON RENE JOSEY	
EXHIBIT NO. 2.....	81
- JUDICIAL MERIT SELECTION COMMISSION SWORN STATEMENT OF JON RENE JOSEY	
EXHIBIT NO. 1.....	94
- JUDICIAL MERIT SELECTION COMMISSION PERSONAL DATA QUESTIONNAIRE OF THE HONORABLE ALISON RENEE LEE	
EXHIBIT NO. 2.....	94
- JUDICIAL MERIT SELECTION COMMISSION SWORN STATEMENT OF THE HONORABLE ALISON RENEE LEE	
EXHIBIT NO. 1.....	126
- JUDICIAL MERIT SELECTION COMMISSION PERSONAL DATA QUESTIONNAIRE OF GRACE GILCHRIST KNIE	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBIT INDEX (CONTINUED)

EXHIBITS:	PAGE:
EXHIBIT NO. 2.....	126
- JUDICIAL MERIT SELECTION COMMISSION PERSONAL DATA	
QUESTIONNAIRE AMENDMENT OF GRACE GILCHRIST KNIE	
EXHIBIT NO. 3.....	126
- JUDICIAL MERIT SELECTION COMMISSION SWORN STATEMENT	
OF GRACE GILCHRIST KNIE	
EXHIBIT NO. 1.....	148
- JUDICIAL MERIT SELECTION COMMISSION PERSONAL DATA	
QUESTIONNAIRE OF THE HONORABLE JAMES DONALD	
WILLINGHAM, II	
EXHIBIT NO. 2.....	148
- JUDICIAL MERIT SELECTION COMMISSION SWORN STATEMENT	
OF THE HONORABLE JAMES DONALD WILLINGHAM, II	
EXHIBIT NO. 1.....	183
- E-MAIL FROM BURNET R. MAYBANK, III	
DATED NOVEMBER 16, 2016	

* * * * *

Court Reporter's Legend:

- dashes [--] Intentional or purposeful interruption
- ... Indicates trailing off
- [ph] Denotes phonetically written
- [sic] Written as said

1 SENATOR CAMPSSEN: Welcome, Judge Short.

2 JUDGE SHORT: Thank you.

3 SENATOR CAMPSSEN: Would you please raise
4 your right hand.

5 WHEREUPON:

6 THE HONORABLE PAUL EDGAR SHORT, JR., being
7 duly sworn and cautioned to speak the truth, the whole
8 truth and nothing but the truth, testifies as follows:

9 SENATOR CAMPSSEN: Judge, have you had an
10 opportunity to review your personal data questionnaire and
11 sworn statement?

12 JUDGE SHORT: Yes, sir.

13 SENATOR CAMPSSEN: Are there -- are they
14 correct?

15 JUDGE SHORT: Yes, to the best of my
16 knowledge.

17 SENATOR CAMPSSEN: Does anything need to be
18 changed?

19 JUDGE SHORT: Nothing that I know of, sir.

20 SENATOR CAMPSSEN: Do you object to making
21 these documents, and any amendments thereto, a part of the
22 record of your sworn testimony?

23 JUDGE SHORT: No, sir.

24 SENATOR CAMPSSEN: It will be done at this
25 point in the transcript. If we could get his sworn

1 statement entered into the record.

2 (EXHIBIT NO. 1 - JUDICIAL MERIT SELECTION
3 COMMISSION PERSONAL DATA QUESTIONNAIRE OF THE
4 HONORABLE PAUL EDGAR SHORT, JR.)

5 (EXHIBIT NO. 2 - JUDICIAL MERIT SELECTION
6 COMMISSION SWORN STATEMENT OF THE HONORABLE PAUL
7 EDGAR SHORT, JR.)

8 SENATOR CAMPSER: Judge Short, the Judicial
9 Merit Selection Commission has thoroughly investigated your
10 qualifications for the bench. Our inquiry has focused on
11 nine evaluative criteria, and has included a ballot box
12 survey, a thorough study of your application materials,
13 verification of your compliance with state ethics laws, a
14 search of newspaper articles in which your name appears, a
15 study of previous screenings, a check for economic
16 conflicts of interests. We have received no affidavits
17 filed in opposition to your election, and no witnesses are
18 present to testify.

19 Do you have a brief opening statement that
20 you would like to make at this time?

21 JUDGE SHORT: No, sir. I'd just like to
22 thank the Legislature for allowing me to serve for the last
23 twenty-five years. It's been a great experience. I've
24 done my best. I hope I've done a good job. And I'd like
25 to continue serving on the Court of Appeals.

1 SENATOR CAMPSSEN: Thank you. Judge, would
2 you please answer Counsel's questions.

3 JUDGE SHORT: Yes, sir.

4 EXAMINATION BY MS. BENSON:

5 **Q. Judge Short, I think I've miscounted, but I had**
6 **you serving eight years on the circuit court and twelve**
7 **years on the Court of Appeals. Why is it that you want to**
8 **continue serving as a Court of Appeals judge?**

9 A. Well, I find the work very challenging. And I
10 served thirteen years as a circuit court judge.

11 **Q. Thank you, sir.**

12 A. And at that particular time in my life, it was a
13 good change, I thought. And it turned out that I was right
14 in that respect. From going to the circuit to the Court of
15 Appeals, because of the experiences I'd had as an lawyer
16 for twenty -- practicing law twenty years, and then
17 thirteen years on the circuit court, going to the Court of
18 Appeals presented a new challenge.

19 It's certainly very different, but I've enjoyed
20 every minute of it. A lot of my fellow circuit court
21 judges used to kid me, because you lose contact with people
22 when you go on the circuit court, as far you don't interact
23 with the lawyers and the clerk of courts and the law
24 enforcement officers and the bailiffs and the parties, like
25 you did when you were a circuit court judge.

1 But I like to read. And I do a lot of reading.
2 In fact, my wife says I read all the time. But I've just
3 found it very challenging, and I'd like to continue to do
4 that until my retirement.

5 **Q. Thank you. Judge Short, please explain one or**
6 **two brief accomplishments that you feel that you've**
7 **completed during your tenure, and then a goal that you**
8 **would like to achieve upon reappointment.**

9 A. Well, I would -- if reappointed, I would like to
10 continue to work to bring the court together. We just had
11 a new chief judge elected less than a year ago, and I think
12 we are more collegial over there now. We're certainly
13 working more together. He seems to be -- want to include
14 everyone in making policy decisions for the court.

15 I've tried to assist him with -- since I'm the
16 second senior member over there, of all the other members
17 of the court I hope I've been able to kind of assist him in
18 -- in that endeavor. And I'd like to continue to do that.

19 **Q. Thank you. Judge, although you addressed this in**
20 **your sworn affidavit, could you please explain to the**
21 **members of the Commission what you think is the appropriate**
22 **demeanor for a judge.**

23 A. Well, I think that a judge should treat all of
24 the lawyers and litigants with dignity and respect and
25 kindness. I try to do that. I hope I've done that in my

1 twenty-five years on the bench. And I plan on continuing
2 to do that.

3 Q. Judge, the Commission received 354 ballot box
4 surveys regarding you, with 19 having additional comments.
5 Many of the comments were very positive, including:

6 "Highly qualified. Excellent. Experienced.
7 Wonderful. A keen mind and a heart for service."

8 One of those 19 comments expressed some concerns,
9 and those were concerns about your legal knowledge and a
10 display of irritation on the bench. How would you respond
11 to that concern, sir?

12 A. Well, I certainly am sorry that any attorney, I
13 suppose, had felt that way. I certainly try to treat
14 everyone with dignity and respect. But if it's just one
15 out of that many -- in 25 years, you have to make some very
16 difficult decisions. And as a circuit judge I've imposed a
17 lot of sentences; a lot of people weren't happy with those
18 sentences. I also made a lot of decisions, and I've
19 written a lot of opinions as a Court of Appeal judge, and
20 I'm sure everyone hadn't agreed with those opinions.

21 So sometimes you have a disgruntled litigant or
22 attorney. And I would certainly hope that I have never
23 treated anyone that way. But if I did, I'm sorry.

24 Certainly, I try and treat everyone with dignity and
25 respect and kindness.

1 Q. Thank you. Judge Short, on your PDQ, you
2 indicated one pending case since your last screening that
3 had been filed against you, and it had also been filed
4 against all the members of the court. Is that still
5 pending within the Supreme Court?

6 A. No, ma'am. The last information I was given at
7 our last agenda meeting, that case has been resolved, I
8 think.

9 Q. Thank you, sir. Could you tell us how it's been
10 resolved?

11 A. No, ma'am. They didn't tell me. I think it was
12 dismissed.

13 Q. Okay.

14 A. They didn't -- they didn't give -- they didn't --
15 they just told us it was over.

16 Q. Thank you, Judge. And a few housekeeping issues.
17 Since submitting your letter of intent, have you sought or
18 received the pledge of any legislator either prior to this
19 date or pending the outcome of your screening?

20 A. No, ma'am.

21 Q. Have you asked any third parties to contact
22 members of the General Assembly on your behalf, or are you
23 aware of anyone attempting to intervene in this process on
24 your behalf?

25 A. No, ma'am.

1 Q. Since submitting your letter of intent to run for
2 this seat, have you contacted any members of the commission
3 about your candidacy?

4 A. No, ma'am.

5 Q. Do you understand that you're prohibited from
6 seeking a pledge or commitment, directly or indirectly,
7 until 48 hours after the formal release of the Commission's
8 Report, and are you aware of the penalties for violating
9 the pledging rules; that it is a misdemeanor, and a
10 conviction the violator must be fined not more than a
11 thousand dollars or imprisoned not more than ninety days?

12 A. Yes, ma'am.

13 Q. Thank you.

14 MS. BENSON: Mr. Chairman, I would note that
15 the Piedmont Citizens Committee reported that Judge Short
16 is one of the most senior members of the Court of Appeals,
17 and his deep experience is evident. He also brings a
18 practicality and common sense to his position, for which he
19 received particular praise.

20 I would also note that -- for the record,
21 that any concerns raised during the investigation have been
22 incorporated into the questioning of the candidate today.
23 And I have no further questions.

24 SENATOR CAMPSEN: Thank you, Ms. Benson. Do
25 any members have any questions for Judge Short?

1 (Hearing none.)

2 SENATOR CAMPSEN: Silence is golden. All
3 right. So Judge, thank you for being with us today. That
4 concludes this portion of the screening process. As you
5 know, the record will remain open until the formal release
6 of the report of qualifications, and you may be called back
7 at any such time if the need arises.

8 I thank you for offering. And thank you for
9 your service to the State of South Carolina.

10 JUDGE SHORT: Thank you Mr. Chairman.

11 (Candidate excused.)

12 SENATOR CAMPSEN: Welcome, Judge Williams.

13 JUDGE WILLIAMS: Good morning.

14 SENATOR CAMPSEN: Good morning. Please
15 raise your right hand.

16 WHEREUPON:

17 THE HONORABLE HARRIS BRUCE WILLIAMS, being
18 duly sworn and cautioned to speak the truth, the whole
19 truth and nothing but the truth, testifies as follows:

20 SENATOR CAMPSEN: Have you had an
21 opportunity to review your personal data questionnaire and
22 sworn statement?

23 JUDGE WILLIAMS: I have. It appears to be
24 the one I reviewed last night.

25 SENATOR CAMPSEN: Are they correct?

1 JUDGE WILLIAMS: Yes, sir.

2 SENATOR CAMPSEN: Does anything need to be
3 changed?

4 JUDGE WILLIAMS: No, sir.

5 SENATOR CAMPSEN: Do you object to our
6 making these documents, and any amendments thereto, a part
7 of the record of your sworn testimony?

8 JUDGE WILLIAMS: No, sir.

9 SENATOR CAMPSEN: That will be done at this
10 point in the transcript.

11 (EXHIBIT NO. 1 - JUDICIAL MERIT SELECTION
12 COMMISSION PERSONAL DATA QUESTIONNAIRE OF THE
13 HONORABLE HARRIS BRUCE WILLIAMS)

14 (EXHIBIT NO. 2 - JUDICIAL MERIT SELECTION
15 COMMISSION SWORN STATEMENT OF THE HONORABLE
16 HARRIS BRUCE WILLIAMS)

17 SENATOR CAMPSEN: Judge Williams, the
18 Judicial Merit Selection Commission has thoroughly
19 investigated your qualifications for the bench. Our
20 inquiry has focused upon nine evaluative criteria, and has
21 included a ballot box survey, a thorough study of your
22 application materials, verification of your compliance with
23 state ethics laws, a search of newspaper articles in which
24 your name appears, a study of previous screenings, a check
25 for economic conflicts of interests. We have no affidavits

1 filed in opposition to your election, and no witnesses are
2 present to testify.

3 Do you have a brief opening statement you
4 would like to make at this time?

5 JUDGE WILLIAMS: No, sir. Just to thank Ms.
6 Brogdon and Mr. Cohl for their courtesy in the process.
7 I've dealt with them in the last number of months, and I
8 appreciate their courtesy and kindness during that time.

9 SENATOR CAMPSSEN: Thank you. Please answer
10 Mr. Cohl's questions.

11 EXAMINATION BY MS. COHL:

12 Q. Good morning, Judge.

13 A. Good morning.

14 Q. Why do you want to continue serving as a Court of
15 Appeals judge?

16 A. I think it's a way for me to contribute to our
17 state. I've been a judge, I guess, now for almost twenty-
18 two years; nine years with the family court and twelve
19 years in the Court of Appeals. And I think it's a way to
20 continue that service in the Court of Appeals.

21 But I also serve as drug court judge in the
22 juvenile drug court, that I started almost twenty years
23 ago. And I probably will help a little bit with the adult
24 and veterans courts in of Richland County. Justice
25 Pleicones has been kind enough to sign an order, letting me

1 do that. So watching and learning a little bit may help
2 out with that. So it gives me something to do, a little
3 bit of night court on occasion. So I'd just like to
4 continue my service to the state.

5 **Q. Thank you. Please explain one or two brief**
6 **accomplishments that you feel you have completed during**
7 **your tenure, and then a goal you would like to accomplish.**

8 A. I think what I mentioned earlier with being
9 involved with the drug courts in South Carolina, I think
10 I've been a part of -- hopefully, I've helped grow those
11 across the state. And when we first started there were
12 four drug courts in South Carolina, and I think now every
13 circuit has at least one. And I think there are probably
14 close to thirty drug courts in South Carolina, plus mental
15 health courts as well as other types of alternative courts.

16 So I guess I'd like to see at some point, is a
17 statute that institutionalizes these entities, more so than
18 what we have at this point. And maybe I can contribute in
19 that -- in that way at some point.

20 **Q. Although you address this in your sworn**
21 **affidavit, could you please explain to the members of the**
22 **Commission what you think the appropriate demeanor is for a**
23 **judge.**

24 A. I think a judge needs to be patient and
25 courteous, and show appropriate respect for everyone in the

1 courtroom. And I hope that I have done that over the
2 years, in service to the family court bench as well as the
3 Court of Appeals. But I think over the years, for me the
4 lawyers and the litigants -- if you and they understand
5 that you have respect for them and understand the
6 importance of their case, I think it's returned to the
7 court. And it makes everything in the courtroom just work
8 better.

9 Q. Thank you, Judge Williams. The Commission
10 received 720 ballot box surveys regarding you, with 47
11 additional comments. The ballot box survey, for example,
12 contained the following positive comments:

13 "Judge Williams is always fair and impartial with
14 an amazing temperament. He possesses both a keen mind and
15 well-founded sense of principle."

16 A written comment expressed concerns over
17 integrity. Would you like to offer a response to this
18 comment?

19 A. I guess I need to work harder. I think you
20 indicated to me when we met, that there were a number of
21 very positive comments, and some 47 who took the time to
22 indicate those things, and that there were two that were
23 negative.

24 And what that tells me is maybe I didn't do quite
25 as good of job as I needed to do for them to feel like they

1 were treated appropriately, or that what I was doing was
2 the right thing in those circumstances. So I guess I'll
3 just work a little bit harder at trying to make sure that
4 happens in the courtroom.

5 Q. Thank you, Judge. Now just a few housekeeping
6 issues. Since submitted your letter of intent, have you
7 sought or received the pledge of any legislator either
8 prior to this date or pending the outcome of your
9 screening?

10 A. No, sir.

11 Q. Have you asked any third parties to contact
12 members of the General Assembly on your behalf, or are you
13 aware of anyone attempting to intervene in this process on
14 your behalf?

15 A. No, sir.

16 Q. Since submitting your letter of intent to run for
17 this seat, have you contacted any members of the Commission
18 about your candidacy?

19 A. No, sir.

20 Q. Do you understand that you're prohibited from
21 seeking a pledge or commitment, directly or indirectly,
22 until 48 hours after the formal release of the Commission's
23 report? And are you aware of the penalties for violating
24 the pledging rules?

25 A. Yes, sir.

1 **Q. Thank you, Judge Williams.**

2 MR. COHL: I would note that the Midlands
3 Citizens Committee report that Judge Williams is well
4 qualified in the evaluative criteria of ethical fitness,
5 professional and academic ability, character, reputation,
6 experience, and judicial temperament. The Committee found
7 him qualified in the evaluative criteria of constitutional
8 qualifications, physical health and mental stability. The
9 Committee stated:

10 "Judge Williams is the epitome of what we
11 want in a public judge to be. His long and distinguished
12 service speaks for itself."

13 I would just note for the record, that any
14 concerns raised during the investigation regarding the
15 candidate were incorporated in the questioning of the
16 candidate today. And, Mr. Chairman, I have no further
17 questions.

18 SENATOR CAMPSSEN: Thank you, Mr. Cohl. Any
19 questions from members for Judge Williams?

20 (Hearing none.)

21 SENATOR CAMPSSEN: No questions? Judge,
22 silence is golden. On that account, thank you for being
23 with us. That concludes this portion of our screening
24 process. As you know, the record will remain open until
25 the formal release of the report of qualifications, and you

1 may be called back at any such time if the need arises.

2 Thank you for offering. And thank you for
3 your service to the State of South Carolina.

4 JUDGE WILLIAMS: Thank you for your
5 courtesy.

6 SENATOR CAMPSSEN: Have a great day.

7 JUDGE WILLIAMS: Thank you.

8 (Candidate excused.)

9 SENATOR CAMPSSEN: Welcome, Mr. Hewitt.

10 MR. HEWITT: Thank you, Mr. Chairman. It's
11 a pleasure to be here.

12 SENATOR CAMPSSEN: Please raise your right
13 hand.

14 WHEREUPON:

15 BLAKE ALEXANDER HEWITT, being duly sworn and
16 cautioned to speak the truth, the whole truth and nothing
17 but the truth, testifies as follows:

18 SENATOR CAMPSSEN: Have you had an
19 opportunity to review your personal data questionnaire and
20 sworn statement?

21 MR. HEWITT: Yes, sir, I have.

22 SENATOR CAMPSSEN: Are they correct?

23 MR. HEWITT: Yes, sir.

24 SENATOR CAMPSSEN: Does anything need to be
25 changed?

1 MR. HEWITT: No, sir.

2 SENATOR CAMPSSEN: Do you object to making
3 these documents and any amendments, if applicable, a part
4 of the record of your sworn testimony?

5 MR. HEWITT: No, sir. Please do.

6 SENATOR CAMPSSEN: It will be done at this
7 point of the transcript.

8 (EXHIBIT NO. 1 - JUDICIAL MERIT SELECTION
9 COMMISSION PERSONAL DATA QUESTIONNAIRE OF BLAKE
10 ALEXANDER HEWITT)

11 (EXHIBIT NO. 2 - JUDICIAL MERIT SELECTION
12 COMMISSION PERSONAL DATA QUESTIONNAIRE AMENDMENT
13 OF BLAKE ALEXANDER HEWITT)

14 (EXHIBIT NO. 3 - JUDICIAL MERIT SELECTION
15 COMMISSION SWORN STATEMENT OF BLAKE ALEXANDER
16 HEWITT)

17 SENATOR CAMPSSEN: Mr. Hewitt, the Judicial
18 Merit Selection Commission has thoroughly investigated your
19 qualifications for the bench. Our inquiry has focused on
20 nine evaluative criteria, and has included a ballot box
21 survey, a thorough study of your application materials,
22 verification of your compliance with state ethics laws, a
23 search of newspaper articles in which your name appears, a
24 study of previous screenings, a check for economic
25 conflicts of interest. We have received no affidavits

1 filed in opposition to your election, and no witnesses are
2 present to testify.

3 Do you have a brief opening statement you
4 would like to make at this time?

5 MR. HEWITT: No, Mr. Chairman. I know the
6 time constraints you're under. I would like to thank you
7 for the opportunity to appear before the Commission, and to
8 thank your staff who you know are excellent. But that's
9 it.

10 SENATOR CAMPSSEN: Thank you. Please answer
11 Counsel's questions at this time.

12 MR. DAVIDSON: Thank you, Mr. Chairman. I
13 note for the record that based on the testimony contained
14 in the candidate's PDQ, which has been included in the
15 record with the candidate's consent, Mr. Hewitt meets the
16 constitutional and/or statutory requirements for this
17 position regarding age, residence, and years of practice.

18 EXAMINATION BY MR. DAVIDSON:

19 **Q. Mr. Hewitt, could you please explain to the**
20 **Commission why you'd like to serve on the Court of Appeals?**

21 A. It would be my pleasure. There are two reasons.
22 The first is that I am drawn to this work, and by that I
23 mean appellate work. I was lucky to discover this while I
24 was in law school. And it is for that reason I spent the
25 majority of my professional career as an appellate lawyer.

1 I did this on purpose. I gravitated towards appellate work
2 because I love it.

3 The second reason is public service. One of the
4 truths in life, I'm convinced, is that we are at our best
5 when were serving other people. I happen to believe that's
6 because we were made that way by our Creator. I love my
7 law firm. I'm blessed that they allow me to practice with
8 them. But the attraction of the Court of Appeals for me is
9 it's an opportunity to become a pure public servant, and
10 continue to do the type of work, the appellate work that I
11 find so motivating, and from which I derive so much
12 enjoyment.

13 I'm sure it sounds cliché and a little trite, but
14 for me the opportunity to marry those two things, public
15 service and appellate practice, is almost too good to be
16 true; it would be the honor of my professional life to
17 serve the General Assembly, the Executive, and my fellow
18 citizens in this way.

19 **Q. Thank you. How do you feel your legal and**
20 **professional experience thus far will assist you to be an**
21 **effective judge on the Court of Appeals?**

22 A. Well, as you know from my PDQ, I've spent the
23 overwhelming majority of my professional career devoted to
24 becoming the best appellate lawyer I could possibly be.
25 And I can think of no better training or experience for the

1 Court of Appeals than that. I know the system well,
2 because I've been a frequent user of it. I know the
3 frustrations that users of the system experience, because
4 I've experienced those frustrations myself. I know the
5 expectations that clients have and that the public has,
6 because I've had to counsel clients on those expectations.

7 As an appellate lawyer my clients demand that I
8 produce a high quality written work product in a reasonable
9 amount of time. And they have that same demand and
10 expectation of the Court of Appeals. And justifiably so.

11 We're blessed in this state to have members of
12 the appellate bench with a rich diversity of backgrounds.
13 But I frankly think it might help the Court of Appeals to
14 have the perspective of someone who is fresh from private
15 practice, and who knows firsthand, the challenges,
16 expectations and experiences I've tried to articulate.

17 **Q. Could you describe your general judicial**
18 **philosophy please?**

19 A. Well, I would consider myself, in the matters of
20 statutory interpretation, a textualist. The primary
21 purpose of the judiciary is to implement the legislation
22 enacted by the General Assembly.

23 I consider myself a minimalist. And by that, I
24 mean I don't seek a ruling from an appellate court that
25 goes beyond the requirements of a particular case. I can

1 go on and on, but those are the two verbs -- or two words
2 that I would use to describe a textualist and minimalist.

3 **Q. Thank you. What is your vision for the future of**
4 **the judicial -- of our judicial system? And what changes**
5 **would you advocate, and why?**

6 A. Well, I think the vision for the future of the
7 judicial system, produce high quality -- at the appellate
8 level, produce high quality written decisions in a
9 reasonable amount of time, that honor the two rules that we
10 had in Judge Anderson's chambers, which was: Treat every
11 case as the most important case in the world, because for
12 the people involved, it is the important case in the world.
13 And make the right call for the right reasons.

14 As far as changes, you know, I haven't candidly
15 given time on the front end to envisioning any specific
16 changes. Although, I think that both appellate courts
17 would do well to adopt a practice, if not an internal rule,
18 of publishing written decisions in all cases argued the
19 previous court term by the time they return from their
20 summer recess.

21 You know, it's not the U.S. Supreme Court. The
22 appellate dockets in this state are much large than at the
23 federal level. But appellate cases have been worked up in
24 advance before argument. Oftentimes a bench memo's been
25 prepared and the record's been studied carefully, the

1 briefs have been studied carefully; there's been a robust
2 discussion and oral argument, and then a conference with
3 the judges. There's no reason not to go ahead and make a
4 decision and use those dead months, July and August, when
5 there is no court, to push the previous year's workload
6 out. I think the public demands it. And quite frankly,
7 they're in entitled to it.

8 **Q. To what extent do you believe that a judge should**
9 **or should not defer to the actions of the General Assembly?**

10 A. Well, I think that a judge -- the judge's
11 principle role is to interpret and enforce the public
12 policy that the General Assembly has put in place, and
13 statutory law. So great deference is afforded -- is to be
14 afforded the General Assembly.

15 Statutes, if we're discussing an area -- excuse
16 me -- a question of statutory interpretation are presumed
17 constitutional, and must only be declared unconstitutional
18 if their unconstitutionality is clear and inescapable.

19 **Q. Thank you, Mr. Hewitt. The Commission received**
20 **293 ballot box surveys regarding your candidacy, with 60**
21 **additional comments. The ballot box survey, for example,**
22 **contained the following positive comments:**

23 **"Blake possesses the superior intellect,**
24 **reasonableness, work ethic, and most importantly, a sound**
25 **and reasoned decision-making necessary to make him a valued**

1 asset to the Court of Appeals. His exceptional intellect,
2 temperament and work ethic would serve the court well.
3 He's one of the smartest and yet most grounded people I've
4 ever met. A great person."

5 And lastly, "This attorney is the best appellate
6 lawyer I've encountered in my long career."

7 However, three of the comments expressed concerns
8 regarding experience, and each of them citing a lack of
9 experience. What response would you offer to this -- to
10 this concern?

11 A. Well, first of all, I am grateful for the
12 positive comments. I've never considered myself someone
13 who took compliments particularly well. But I appreciate
14 those, and would strive very much to emulate those
15 characteristics.

16 I've heard those same negative comments myself.
17 As you know, I've run once before. Sometimes the comments
18 are directed to my trial experience; they say I don't have
19 trial experience. Which is not true, by the way. And
20 other times it's a direct reference to my age.

21 People are entitled to their own opinion. And I
22 certainly respect everyone's opinion. But I happen to
23 believe that age and experience are two of the strengths of
24 my candidacy. I've been told I look a little young, but
25 I'm not as young as I might look. I'm 38. I'll be almost

1 39 by the time of the election. My age gives me an
2 opportunity to have an extended career in public service,
3 and provide some stability on an appellate court that's
4 undergone a lot of transition recently, and frankly, could
5 use some stability.

6 And what that court needs to succeed, in my view,
7 are people who are committed to giving that work the best
8 that they can, and who are committed to that institution.
9 The Court of Appeals is not a stepping stone and it's not a
10 retirement job; it requires people who are willing to give
11 it their best. And that is my pledge to the Commission.

12 As far as my experience, I'm proud of my resume.
13 It's heavy on appellate work, because I was lucky enough to
14 discover in law school, that, that was my passion. If you
15 have to defend a deposition, you wouldn't hire me. If you
16 were crafting a discovery plan, you wouldn't hire me. I
17 hope if you had big appellate litigation, and were --
18 wanted high quality briefs and first-rate oral argument,
19 then I would be on the list.

20 My firm chooses to advertise me as an appellate
21 lawyer, because they believe that's my competitive
22 advantage. And I can't fault them for that because, as I
23 shared with you that's my passion, even though my partner
24 and I are routinely hired to consult in trial-level
25 litigation, and are on trial dockets now.

1 I hope that my experience as a practitioner would
2 be an asset to the Court of Appeals as it tries to fulfill
3 its essential mission. I certainly would not have offered
4 as a candidate if I thought otherwise.

5 Q. Thank you. At this time I have four quick
6 housekeeping questions to go through. Since submitting
7 your letter of intent have you sought or received the
8 pledge of any legislator, either prior to this date or
9 pending the outcome of your screening?

10 A. No, sir.

11 Q. Have you asked any third parties to contact
12 members of the General Assembly on your behalf, or are you
13 aware of anyone attempting to intervene in this process on
14 your behalf?

15 A. No, sir.

16 Q. Since submitting your letter of intent to run for
17 this seat, have you contacted any members of the Commission
18 about your candidacy?

19 A. No, sir.

20 Q. You understand that you're prohibited from
21 seeking a pledge or commitment, directly or indirectly,
22 until 48 hours after the formal release of the Commission's
23 report, and are you aware of the penalties for violating
24 the pledging rules?

25 A. Yes, sir.

1 MR. DAVIDSON: I would note that the Pee Dee
2 Citizens Committee reported that Mr. Hewitt is well
3 qualified in the evaluative criteria of ethical fitness,
4 professional and academic ability, character, reputation,
5 and judicial temperament, and qualified in the remaining
6 evaluative criteria of constitutional qualifications,
7 physical health and mental stability, and experience.

8 The Committee stated in summary, Mr. Hewitt
9 is well regarded for his appellate work; however, some
10 concerns were voiced of his lack of trial experience. I
11 note that any concerns raised during the investigation
12 regarding the candidate were incorporated into my
13 questioning today.

14 Mr. Chairman, I have no further questions.

15 SENATOR CAMPSSEN: Thank you. Any questions
16 from members of the Commission for Mr. Hewitt? Senator
17 Malloy.

18 SENATOR MALLOY: Thank you, Mr. Chairman.

19 EXAMINATION BY SENATOR MALLOY:

20 Q. Mr. Hewitt, how are you doing today?

21 A. I'm doing well, Senator. How are you?

22 Q. I'm doing good. So I just want to highlight a
23 few questions that we have. On one I'll start off in
24 general: What's been your greatest accomplishment?

25 A. The greatest accomplishment in my legal career?

1 I was particularly honored, early on in -- when I came into
2 private practice, to do some appellate work on behalf of
3 the South Carolina Bar. We wrote an amicus brief in a case
4 with which I expect -- I know you're familiar because of
5 our long work on behalf of indigent defense funding, and I
6 expect other members of the General Assembly are aware as
7 well, and ex parte Brown case which held that lawyers had a
8 constitutional right to reasonable compensation for their
9 services in appointed cases. That was a deep honor for me
10 to represent my fellow lawyers.

11 You know, I've been privileged to consistently
12 have cases where I felt like I could invest myself in --
13 wholeheartedly in the advocacy. And a former justice,
14 Robert Jackson, who is a hero of mine said that, "True
15 investment by the advocate is the essential quality of real
16 lawyering."

17 I am proud of -- of the work I did in the Diocese
18 of South Carolina case, the Episcopal Church case -- which
19 is still pending, and I may lose five-oh -- that was very
20 challenging litigation.

21 The greatest accomplishment for me, personally,
22 is marrying up. Even though you didn't ask about that.

23 **Q. That was my next question. So the next thing is,**
24 **do you believe you would encounter any problems moving from**
25 **advocacy to the role as a judge? Because advocates for our**

1 **clients are even in appellate work. Tell me how you'd make**
2 **the adjustment.**

3 A. Well, I think a virtue of my experience in that
4 I've had a significant amount of appellate experience, is I
5 think the essential duties I would be called on to fulfill
6 as an appellate judge, are really the same things I've been
7 doing every day for the last eleven years.

8 I mean, as an appellate judge, I would be called
9 on to have complete mastery of the record. I do that every
10 day. I would be called on to read briefs closely. I do
11 that every day. I would be called on to scrutinize the
12 language of statutes and the language of the constitution
13 to determine the intent of the drafters. I do that every
14 day when I'm trying the figure out the theory of the case
15 that I'm going to present to the Court of Appeals and to
16 the Supreme Court.

17 I'd be charged with producing a high quality work
18 product. I spent almost all of my time either researching
19 or writing as an appellate practitioner. So I think there
20 would be very little adjustment in terms of how I would
21 move work. The adjustment for me will be getting used to
22 being on that side of the bench as opposed to, you know,
23 behind the lectern, or the podium.

24 But I'm hopeful that I would make the transition
25 easily. And I expect so.

1 **Q. And do you have any expertise other than**
2 **practicing law?**

3 A. I don't know about that. You know, once upon a
4 time I was an avid outdoorsman. I don't get to do as much
5 of that as I used to, because my wife and I now have a two-
6 year-old. And that's a demanding responsibility, but a
7 great responsibility.

8 My past as an engineer maybe has resulted in me
9 being a little bit more handy around the house than most.
10 But that's nothing approaching expertise. My wife could
11 probably give you a long list of my faults.

12 **Q. So and I also want to just gather your views on**
13 **our court system as a whole in South Carolina, as it**
14 **relates to issues of diversity, do you believe that our**
15 **bench is diverse enough? And give me your thoughts on**
16 **diversity for the bench in South Carolina**

17 A. Well, as a statistical matter, I haven't run -- I
18 haven't seen the statistics lately. But I know the last
19 statistics I heard were that our bench was neither
20 reflective of the population distribution. I'm thinking in
21 terms of, you know, general population, grouping people by
22 ethnic classification, nor the -- it was fairly
23 representative in terms of percentage of lawyers, but not
24 in terms of the population. I stumble over that a good
25 bit.

1 I mean, you know, for people to have competence
2 in the court system, the court system needs to reflect the
3 diversity that we have in this state. And that's a
4 challenge. It's been a challenge for a long time. This
5 Commission doesn't control the people who apply, you know.
6 So if not enough minorities, or persons of a particular
7 gender apply, you don't have control over that. All you
8 can do is encourage people to go after it.

9 Q. Would it be such that -- in our state, that we
10 create a culture so that we could end up having more -- for
11 example, we just swore in the only judge of Spanish descent
12 in our state, just this past year. And I think we have one
13 of Asian descent. And I think that's -- for other
14 minorities, I mean, I think that's -- that's it.

15 Which leads into my -- my next question is that
16 the access to our courts. And I want you to speak to that.
17 Because as an appellate lawyer, those individuals that are
18 challenged financially, really don't have access to the
19 appellate courts.

20 A. It is a significant challenge in trial litigation
21 and appellate litigation, as you correctly identified. One
22 of the things I like about -- have liked about my practice
23 with my law firm is that we -- while we have to pay
24 attention the bottom line, because my partners have to keep
25 the doors of the business open, and they demand that I

1 produce for them, or at least don't cost them money, my
2 partner and I do get to often represent people who don't
3 have means. You know, a lot of my work is contingency
4 work.

5 Q. I want to speak to that. Because, you know, in
6 my early life I did a good bit of criminal cases, and in my
7 fee agreement I had language in there that said, you know,
8 "I don't have to your appeal." And then so we have -- we
9 have pretty much made the burden heavy on the appellate
10 practice here in South Carolina.

11 As you know, I think there was some partnerships
12 with some private law firms, and I know that some of the
13 judges -- I know Judge Few had worked on it some, to end up
14 having lawyers partner with appellate lawyers that were --
15 that represented individuals.

16 And I just want to see if there is any
17 inclination to end up having programs like that whenever
18 you -- as a Court of Appeals judge. Because the people
19 that can afford it can go out and hire you now, but there
20 are people that -- that -- where we are doing access to
21 courts now.

22 And they have a case in the lower courts, they
23 maybe pro se, that doesn't go their way, and then they
24 don't have the avenues to the appeal. I want to make
25 certain that our court, as we go forward, with a growing

1 **Spanish population, and with a large minority population,**
2 **and a very large poor population in general, has access to**
3 **our appellate courts.**

4 A. It's a -- it's a tremendous problem. And you
5 articulated the case very well, and forcefully. And the
6 status quo is not acceptable. You know I -- I couldn't
7 agree more. I don't know how you solve it, but I would
8 certainly strive to be part of the solution. Because every
9 -- because everybody deserves the opportunity to have their
10 case heard.

11 Q. And that's what I'm looking for, for the people
12 in this state that come before us, that asks to be on the
13 Appellate Courts, to understand is that it's just not the
14 pro se litigants; it's the people that are going up to the
15 appellate level too. And we don't fund lawyers for free in
16 this state, and so we're depriving our citizens, in a large
17 way, of access to our court system.

18 A. It's great for me as a practitioner, when I get a
19 case like that, that I can get my hands around, and really
20 feel like, even though I'm not getting paid for it, I'm
21 doing something that's meaningful in the law. But that
22 person's case, even though it has a particularly important
23 legal issue, an issue that's important to me, is not any
24 more important than the pro se litigant whose legal issue
25 isn't all that -- you know, it doesn't change the arc of

1 justice. But it's still the most important case in the
2 world to that person.

3 Q. Thank you very much for answering my questions.

4 SENATOR CAMPSER: Representative Smith.

5 EXAMINATION BY REPRESENTATIVE SMITH:

6 Q. Good morning, Mr. Hewitt. How are you doing
7 today?

8 A. I'm doing well, Representative Smith. How are
9 you?

10 Q. I'm fine. I was looking through some of your
11 qualifications and your past experiences. And I know
12 you're a candidate for the Court of Appeals, but one thing
13 that's interesting to me, and I recall my time when I was
14 on the judiciary, I would see you in committee's often,
15 and you were the legislative liaison in addition to the
16 Chief Justice's law clerk.

17 And so we questioned some candidates for Supreme
18 Court, extensively about their philosophy with the
19 Legislature and the General Assembly. And to some degree,
20 that translate in the Court of Appeals, too, by
21 interpreting the laws. I know the constitutional
22 questions are resolved by the Supreme Court. But
23 sometimes the intent of the Legislature on how we -- the
24 interpretation of a -- statutes particularity, some new
25 statutes have come up is before you court. Explain to me

1 **your philosophy on the separation of powers and the**
2 **interpretation of legislative intent through -- through**
3 **statutes that you may be called upon to rule.**

4 A. I will be glad to do my best. In terms of
5 separation of powers, I mean, I think everybody has to
6 stay in their own area of authority. I'm against -- I do
7 not believe in judicial activism. I think a judge's job
8 is to interpret law and not make law.

9 I think Chief Justice Roberts put it very well
10 in his confirmation hearings, when he said his role is an
11 umpire is the call balls and strikes, and not to pitch or
12 to bat. I think good appellate judging requires
13 restraint, discipline and humility. And I've tried to be
14 a restrained, disciplined and humble lawyer. I would do
15 the same as a judge.

16 Now, as far as statutory interpretation, you
17 know, we know from precedent, which is binding in most
18 cases, that the principle endeavor of statutory
19 interpretation is to ascertain the Legislature's intent.
20 And we do that through scrutinizing the words that the
21 Legislature enacts in statutory form.

22 So every statutory case I've ever handled as a
23 law clerk, or as an appellate lawyer, has focused heavily
24 on the precise words that appear in a statute, in an
25 effort to ascertain what the General Assembly's intent was

1 in putting that statute into codified form.

2 I've described myself earlier as a textualist.
3 I believe in -- I believe strongly in that. Because the
4 way to encourage the General Assembly to use precise
5 language is to focus on the precise language the General
6 Assembly used. You're not there as a judge to enact your
7 own public policy. If you do that, you know, you needed
8 to file in March, and run in November.

9 I don't know if that's fully responsive, but
10 that's my response.

11 Q. In regards to some of the criticism that you saw
12 in your ballot box about experience, you know, one thing I
13 note, the same as I noted with your law partner who was
14 before us yesterday, is while you don't have any court
15 experience being on the circuit court or any other court,
16 you do have a unique perspective on working within the
17 Supreme Court.

18 And, you know, I think the one thing I noticed,
19 if you can expand on this a little bit, is you've worked
20 inside the Appellate Court and you've worked on the
21 outside of the Appellate Court, by being a litigant or an
22 advocate -- a advocate in the court for your clients.

23 Tell me, you know, the perspective that gives
24 you, and also things that you believe -- you know,
25 strengths that you could bring to the Court of Appeals,

1 **from having serve in both of those capacities.**

2 A. Well, I was -- I was very gratified to have the
3 opportunity to begin my career as a law clerk for three
4 years at the Supreme Court. And I learned a great deal
5 from the other clerks I worked with, and from all of the
6 justices I worked with. I worked most closely with then
7 Chief Justice Toal, and current Justice Pleicones, because
8 they -- both of their office -- they were only Columbia
9 judges, and their offices were right across the hall from
10 each other.

11 You know, that -- the experience of writing for
12 the court -- which that's really what I was. I was one of
13 the court's staff lawyers. So I would take the briefs
14 that the parties presented, closely scrutinize the record,
15 read all the cases in the briefs, and say, "This is what
16 these people think this case is about. This is what their
17 arguments are. This is what I think the case is about, or
18 who I think has the better arguments. And these are the
19 arguments that are under the surface, that nobody
20 presented to you, which you can't touch because they're
21 not presented to you."

22 And so that experience was a formative part of
23 my development as a lawyer, and I think helped me as I
24 started a career as an appellate practitioner immensely.
25 Because I knew how to file a motion with the Appellate

1 Court, and who would handle that, and how -- hopefully,
2 how to write in a way that would make the issues
3 interesting to them.

4 So I hoped that my experience as -- I've always
5 viewed my experience as a law clerk as a foundation --
6 part of the foundation for being an appellate lawyer. And
7 I would hope both of those would help from a solid
8 foundation to become an appellate judge. So I think
9 sometimes the disconnect of appellate judges have, when a
10 case is being presented, is not having had that experience
11 as an advocate, trying to narrow down precisely the issue
12 that is up for determination in a case. I hope those
13 roles would marry very well.

14 As I said earlier, I certainly wouldn't have
15 offered if I thought it would be counterproductive to move
16 from the advocate's role into the judicial role.

17 **Q. Thank you.**

18 SENATOR CAMPSER: Mr. Hitchcock.

19 MR. HITCHCOCK: Thank you, Mr. Chairman.

20 EXAMINATION BY MR. HITCHCOCK:

21 **Q. Good morning, Mr. Hewitt.**

22 A. Good morning.

23 **Q. I wanted to ask you -- I'm just trying to get a**
24 **little bit of a better idea. On question 6 of your PDQ,**
25 **you indicated that -- it asked about military service.**

1 You indicated that you were -- I guess, went to Marine
2 OCS?

3 A. I did.

4 Q. And then declined a commission as a second
5 lieutenant.

6 A. I did.

7 Q. Can you give me some -- a little bit more
8 background on why you did that --

9 A. I'm happy to.

10 Q. -- and why you made that decision? Because I
11 noticed that you're -- the characterization of your
12 discharge is "administrative Separation." But did you get
13 a Characterization of Service? Or was that the only --

14 A. I don't know. The explanation that I was given
15 at the time was that -- you know, you have to be -- and at
16 the time I knew how long, but I've since forgotten, it's
17 been so many years -- in for an amount of time to have
18 either an honorable or dishonorable or anything. It was
19 just an administrative separation.

20 The way that came about was, I had a grandfather
21 who was a career Marine, my other grandfather was career
22 naval officer, and so that was always sort of there, that
23 interest was there. I thought when I got out of
24 undergraduate school, that I wasn't ready -- interested in
25 going right into practice as a civil engineer.

1 My roommate in college had a similar background;
2 his grandfather was a career Marine and a pilot. So we
3 went together. He went with a flight contract and I went
4 with a law contract. I was going to go be a JA for the
5 Marine Corps. Well, halfway through boot camp, I found
6 out that I didn't get into law school.

7 And so the question then was: Do you stay and
8 accept a -- you know, a commission? And in my case, go be
9 an infantry officer, because I enjoyed boot camp after the
10 initial shock wore off. I enjoyed boot camp very much.
11 Or do you, you know, go home and try and get into law
12 school, you know, the next year?

13 Because if I had stayed in the Service, they
14 would have required me to wait for -- I think it was three
15 years at the time. And so that was a real tough decision
16 for me. I actually hadn't fully made the decision until a
17 fellow platoon mate of mine, a fellow candidate in whom I
18 had confided, sort of told the platoon sergeant who then
19 told the platoon commander that I wasn't sure about
20 whether I was taking me -- taking my commission.

21 And so they called me -- this is five days
22 before we had finished all of the training; we were just
23 waiting to get commissioned. They called me before, you
24 know, a board of the, you know, commander of OCS, and then
25 all of my platoons' officer's staff, and said, you know,

1 "What's your problem?" You know, "Why are you wishy-
2 washy?"

3 I said, "Well, I'm just not sure," you know.
4 And they sort of tried to put the real hard sell on me,
5 and said something about my grandfather that I didn't
6 like. And I said, you know, "What, you-guys, have a --
7 have a good day. I'm going home."

8 I have thought a lot about that, as I think
9 probably anyone would, and wondered how my life would be
10 different. Because I did enjoy boot camp very much. And
11 the honor -- you know, the opportunity to wear the uniform
12 of my country would have been, you know, the deepest honor
13 I ever would have had.

14 But my life would look very different. You
15 know, I mean, my best friends -- I came home and took the
16 LSAT again, got into law school here, the next year, and
17 came here. I made some of my best friends in my life. My
18 best friend at law school introduced me to my wife. You
19 know, my life would just be on a completely different
20 trajectory.

21 So I reflect on that experience with somewhat-
22 mixed emotions. I love -- I took a lot from my boot camp
23 experience. But, you know, to have gotten so close to
24 having that opportunity and not -- you know, not been
25 commissioned and served, is, you know, something that I

1 carry with me all the time.

2 Q. Thank you.

3 SENATOR CAMPSER: Senator Malloy.

4 REEXAMINATION BY SENATOR MALLOY:

5 Q. That's an amazing story. I almost took the same
6 track.

7 A. Yeah.

8 Q. And had Miles Burdine and Gunnery Sergeant
9 Cofield, went to law school, and was getting ready to OCS
10 and basic school and that kind of thing. I didn't go as
11 far as you. But going up a little T34, the little prop-
12 jets and that kind of stuff for the influence and -- you
13 know, the influence to go and be a -- ultimately changed
14 my mind. I didn't step foot there. I did go get my
15 physical.

16 My only -- my only question as a result of that,
17 though, just in having that background, is that in
18 administrative separation they say that it isn't
19 voluntary.

20 A. Yeah. And, you know, it's interesting that you
21 bring that up. So when we were being processed out, they
22 gave me the paperwork. And one of the fellows who was --
23 who was staffing that part of, you know, the boot camp
24 headquarters --

25 Q. That one being different too.

1 A. Yeah, I bet. This happened to me in August of
2 2001, so my life would have been real different. But, you
3 know -- you know, was asking us why we were leaving so
4 close to being commissioned, and I told him the story.
5 And he said, "I wouldn't sign that form."

6 And maybe it was 'cause I didn't know
7 administrative separation was involuntary. But he said --

8 **Q. That's my understanding.**

9 A. Yeah. Yeah.

10 **Q. It's limited involvement in --**

11 A. Yeah.

12 **Q. -- you know, now we have these -- there's a lot**
13 **of issues with veterans and, you know, honorable**
14 **discharge, general discharge and separation means a lot.**
15 **So --**

16 A. Yeah.

17 **Q. So that's the question. Administrative**
18 **separation, I knew that from something that's**
19 **involuntarily. So you might want to go back and check and**
20 **see -- see what your PDQ says --**

21 A. I had performed -- and I don't -- you know, I
22 don't particularly enjoy talking about myself. And I know
23 your time is valuable, but I -- I don't know if it's
24 possible to pull up my record from when I was in boot
25 camp, but I had performed very well in boot camp.

1 SENATOR CAMPSSEN: Any other questions?
2 Representative Rutherford.

3 EXAMINATION BY REPRESENTATIVE RUTHERFORD:

4 Q. Good morning. Any thought -- and obviously, you
5 have an appellate practice that has been your entire
6 background, and Representative Smith and I were talking
7 about this earlier, is it -- the track to the Appellate
8 Courts seems, in the past, to have only gone through the
9 circuit court bench. We can name one that has gone
10 straight to, but it doesn't -- there don't seem to be a
11 lot of people who have done it.

12 Have you -- we've met before. We've talked
13 before. You have so much to offer. Was there any thought
14 to looking at the circuit court first, just because you're
15 gifted, we all know it, we want to see you succeed, we
16 want to be a part of that. But somehow it gets difficult,
17 seemingly, with all the other candidates. I know you see
18 this. So any thought to that, just in matter of strategy?

19 A. Well, sure. And I'd like to take that in two
20 parts, if I can. I want to be real brief, because I know
21 you're short on time. The problem that I had was seeking
22 -- the principle problem that I had, personally, with
23 seeking to serve on the circuit court, the service
24 component of that is very attractive to me, the
25 opportunity to serve my fellow citizens, is that my

1 experience is just so out of balance; it's so heavily
2 weighted on the appellate side.

3 And going in front of the Bar's judicial
4 qualification process, and saying, you know, "This is
5 where my heart is." You know, I have -- you know, a
6 tremendous bulk of experience in the circuit. It's just
7 not true, you know, for me. I mean, I have substantial
8 circuit court experience, but my appellate experience
9 dwarfs it. And this is where my heart is.

10 The second part I would say is there are several
11 people who have gone straight to the Court of Appeals.
12 Alex Sanders, the Jean Toals, the Randy Bells, the Bert
13 Goolsbys, the Bill Howards and at the federal level
14 there's a substantial number of members on the circuit
15 bench on the U.S. Supreme Court that were not trial judges
16 before. I'm not telling you --

17 **Q. -- exclude the federal level. And I didn't add**
18 **in the caveat of those that had service in the General**
19 **Assembly before they went on. But, you know, again, I**
20 **think you're great. And I appreciate you coming in this**
21 **morning.**

22 A. Well, thank you. It's an honor to be here.

23 SENATOR CAMPSSEN: Mr. Safran.

24 MR. SAFRAN: Thank you, Mr. Chairman.

25 EXAMINATION BY MR. SAFRAN:

1 Q. Let me just ask a -- followup a little bit to
2 what Senator Malloy was saying, and take it maybe one step
3 further. As an appellate lawyer it's incumbent upon you
4 to more or less filter cases that come in, and so as to
5 avoid trying to pursue an issue or a claim that's not
6 meritorious, correct?

7 A. Absolutely.

8 Q. And it's not just a matter of trying to maintain
9 credibility with the court, but it's also part of your
10 obligation as a lawyer not to advance a frivolous claim.

11 A. That's absolutely correct. I've always taken
12 the position that the most important asset I have as an
13 appellate lawyer was my reputation with the court for
14 complete honesty and candor. And so I police that very
15 judiciously.

16 Q. And certainly the ballot box shows that your
17 peers have sensed that same quality in you. So let me ask
18 this: Basically, you have been involved in cases that were
19 ones that you felt like were correct in terms of the law,
20 but not necessarily always the most popular, correct?

21 A. I'm thinking of a few of those cases.

22 Q. Well, I can -- I can think of one.

23 A. I'm sure you can.

24 Q. And basically, let me just ask this: In the Bone
25 decision, you were involved in that, correct?

1 A. Correct.

2 Q. Am I safe in saying that by pursuing what you
3 felt like was the appropriate interpretation of the law,
4 you caught a great deal of criticism from your peers.

5 A. I continue to.

6 Q. All right. And am I also safe in saying that,
7 had Bone gone the other way, personally you would have
8 benefitted a great deal more because your book of business
9 would have increased because of the accessibility to the
10 court for appeals that currently aren't going there.

11 A. I think that's correct.

12 Q. All right. So in order to ultimately come to a
13 determination that you felt as a lawyer was the right one,
14 and pursue it the end, effectively, it was against your
15 personal interest, correct?

16 A. Correct.

17 Q. And it was also one that really put you in some
18 level of -- I wouldn't call it jeopardy -- but less than
19 favor with other members of the bar.

20 A. That's correct. But it was driven by the
21 statute.

22 Q. And that's my point. When you talk about
23 advocacy versus sitting and trying to be a judge,
24 ultimately, the judge has to make the right call
25 regardless of the consequences, correct?

1 A. Correct.

2 Q. And in doing that case you made the call based
3 upon the law, as opposed to any personal benefit, or how
4 your friends might feel; and then, ultimately, you were
5 proven right. And as a result, you know, it was against,
6 really, your personal interest. Fair?

7 A. Fair.

8 Q. All right. Thank you.

9 SENATOR CAMPSSEN: Any other questions?

10 (Hearing none.)

11 EXAMINATION SENATOR CAMPSSEN:

12 Q. Mr. Hewitt, I want to followup on a question
13 that Senator Malloy has asked a lot of candidates -- and
14 maybe all, I don't know. But the -- the cases in your
15 career that you're the proudest of -- and I think you
16 mentioned two, could you -- could you say those again and
17 say why -- elaborate a little more on why they're your
18 proudest -- among your proudest representations, or things
19 you've done in your professional career.

20 A. Well, I'm particularly proud of the ex parte
21 Brown decision, for a couple of reasons. I was honored to
22 be hired by the Bar, the organization of my peers, fellow
23 lawyers in the state. And I'm happy about it because we
24 achieved a favorable outcome, an outcome that I think
25 fulfills the law. The Bone decision, I'm proud of.

1 Q. And that one was --

2 A. I'm sorry, that was the --

3 Q. -- that lawyers needed to be compensated, they
4 couldn't be forced to do pro bono work.

5 A. A lawyer's stock and trade is his time.

6 Q. Okay.

7 A. And, you know, it can require reasonable
8 compensation for small cases -- small compensation; a big
9 case, big compensation. I'm proud of the Bone decision,
10 because that involved the Supreme Court settling an area
11 of law where there had been a great deal of controversy.
12 The Court of Appeals was following one track with respect
13 to the appealability in a particular type of
14 administrative case.

15 And it was costing litigants in the system a lot
16 of resources because an unappealable order would get
17 appealed, the opposing party would file a motion to
18 dismiss, the Court of Appeals would not dismiss it; and
19 then whether it was raised in a cert petition or not, the
20 Supreme Court would vacate the Court of Appeals' decision,
21 send everybody back two years, 'cause it's not immediately
22 appealed.

23 The law needs to be stable. There need to be
24 clear rules. So I'm proud of that decision, because it
25 reversed several Court of Appeals' decisions that were

1 wrongly decided, and settle the rule -- which is not the
2 best rule, but it's the rule put in place by statute.

3 I'm proud of the work I did in Episcopal Diocese
4 case, regardless of how it comes out, 'cause I got the
5 opportunity to argue a really important case, a case with
6 constitutional questions, which every lawyer gets excited
7 about. And I got the opportunity to work with really
8 great co-counsel, Tom Tisdale, who's a lion of the South
9 Carolina Bar, from Charleston. Very bright lawyers from
10 out of state, who are in-house counsel for the Episcopal
11 Church, brighter than I will ever be. And, you know, you
12 can't -- we're all influenced by our surroundings, so you
13 can't help but be influenced when you're around great
14 people.

15 You know, but as I say, you know, every case has
16 been meaningful and important to me, if for no other
17 reason than I gave them my very best effort. Which is
18 what I would, if elected to serve is give every case my
19 very best effort. Every brief. Every record. Because
20 every litigant deserves that.

21 **Q. Another question: In your opinion, when does**
22 **making rulings of law become -- cross the line into**
23 **lawmaking?**

24 A. Well, sometimes that's in -- sometimes that's in
25 the eye of the beholder, when people don't win a decision

1 that think the court crossed the line. You know, when
2 we're not -- if the court is acting contrary to language
3 that's been expressed and articulated and enacted by the
4 General Assembly, if a court is entertaining non-
5 justiciable political question -- which sometimes that's a
6 nebular inquiry, but we know what the different types of
7 those non-justiciable political questions are. I think
8 Baker versus Carr is the similar U.S. Supreme Court case
9 on that.

10 You know, the court has a specific arena to play
11 in. And it's a limited arena. Alexander Hamilton called
12 it the least dangerous branch. And, you know, some people
13 would take issue with that, and perhaps rightly so, in
14 certain circumstances. The devil is always in the
15 details.

16 The court needs to be judicious in every case, to
17 confine itself to its appropriate role. Because its role
18 is not making policy. The General Assembly sets the
19 public policy of this state. The court's role is to
20 interpret the public policy, as enacted by the General
21 Assembly, by the people through the General Assembly, and
22 see that, that public policy is enforced.

23 SENATOR CAMPSER: Thank you. Mr. Safran.

24 REEXAMINATION BY MR. SAFRAN:

25 Q. Just real quickly in followup. I think you just

1 heard from the Chairman, as well as we heard in prior
2 hearings, the idea of kind of trying to respect what the
3 Legislature does through the passage of a statute. And I
4 think you said in Bone, even though it was something that
5 may not have been as advantageous to you, personally, your
6 position was the statute was clear and it needed to be
7 respected. And that's been your mantra, I'm assuming, all
8 the way through.

9 A. Absolutely.

10 Q. And would continue to be.

11 A. Absolutely.

12 Q. And I guess on the other side, as an advocate
13 have you not been repeatedly put into a position to look
14 at a case, and to potentially take a more creative or
15 novel spin on maybe a statute that doesn't speak
16 particularly to your circumstances? At least by prior
17 case interpretation.

18 A. Oh, certainly. And I hope you'll tell me if I
19 don't understand your question correctly. But when
20 looking at a statute, you always have to consider not just
21 the circumstances of the case that provide the context for
22 that particular question, but you need to consider all the
23 hypothetical cases that come later. Because the rule of
24 law, you know, the construction of that statute for which
25 you are advocating to an appellate court, will control not

1 just your case, but the hundred cases that the Court of
2 Appeals and the Supreme Court will never see. Is that
3 what you're asking?

4 Q. I think that's part of it. And the other part
5 is this: If you're going to look at a statute and
6 necessarily say, all right, it may never have been
7 construed in the context of what I'm saying, so that there
8 is an open question, basically that's what you have to do
9 to, at least to some degree, every day as a practitioner.

10 A. Oh, absolutely.

11 Q. And it may not be that there's a decision on
12 point. But what you're trying to do is go and get a
13 decision made, based upon maybe an argument that hasn't
14 been advanced in the past. Has that happened?

15 A. Yes, sir.

16 Q. And I guess my question is: Does your frequently
17 doing that as a practitioner kind of give you maybe an
18 advantage over somebody who's been sitting on a circuit
19 bench, maybe, and being very reluctant to want to rock the
20 boat or change precedent, as I've heard from a couple of
21 these judges, leaving that for the Appellate Court? Are
22 you more inclined to be able to kind of attack that type
23 of situation because of the fact that you do it day in and
24 day out?

25 A. I would think so. I mean, we have great trial

1 judges who have gone on to be great appellate court
2 judges; they were just gifted that way. I think the
3 advantage I have for my experience as an appellate lawyer
4 is, I've been doing that sort of thinking every day. I've
5 been in private practice. I haven't been -- you know,
6 I've been trying to write with precision every day in
7 private practice.

8 I don't know how much writing, you know, trial
9 judges get to do, 'cause I've never been one, and am not
10 likely to ever be one. And I didn't work for one except
11 for at the federal level, which is different. The core
12 stuff that I would do in terms of thought process and
13 moving work every day as an appellant judge, I think, is
14 the same thing I've been doing for the last eleven years.

15 **Q. And as I heard from Mr. Nichols, yesterday, not**
16 **that in any way a negative way, but it's a different skill**
17 **set to be an appellate advocate, or an appellate judge,**
18 **than necessarily what the norm is to be a trial judge.**

19 A. I think so. And I think it's also true at the
20 practitioner level, it's very different. Some people can
21 do both. I think it's rare that you find people who do
22 both very well. But the skill sets required, in my view,
23 for effective appellate advocacy, are different skill sets
24 than effective trial advocacy.

25 You're playing to a jury on one hand, who can't

1 ask you questions. And then on the other hand, you're
2 playing to a learned audience who are not just concerned
3 about your case, they're concerned about the hundred cases
4 that they'll never -- they'll never see, who are read up
5 on the law, and who are skilled finding exactly where your
6 weaknesses are and exploiting them.

7 **Q. Thank you very much.**

8 A. My pleasure.

9 SENATOR CAMPSSEN: Mr. Howard.

10 EXAMINATION BY MR. HOWARD:

11 **Q. Good morning.**

12 A. Good morning.

13 **Q. Just a couple of questions. This is more in**
14 **followup to Representative Rutherford's question to you.**
15 **And this is not any sort of reflection on you, or any**
16 **reflection upon any of what you've stated, but do you see**
17 **any value to circuit court experience and bringing that to**
18 **the Court of Appeals?**

19 A. Are you speaking as a judge?

20 **Q. As a judge. If you were -- as judges coming**
21 **forward, stepping up from Circuit Court to Court of**
22 **Appeals, do you see value in that?**

23 A. Oh, there are -- I think there's certainly value
24 in that. And the wonderful thing about appellate judging
25 is that the only things that you can do by yourself are

1 concur or dissent; you can't take any positive action
2 unless you can bring other people with you.

3 I think we hear appellate cases in panels,
4 because the idea is three heads are better than one at the
5 Court of Appeals. At the Supreme Court, five heads are
6 better than one. And to really have a full and robust
7 exchange of viewpoints and ideas, you need people with a
8 breath of experience.

9 So it's great to have people on there who have
10 been circuit court judges, great to have people on there
11 who have been family court judges. I think it's an asset
12 to have people on there who are fresh from private
13 practice and who have substantial appellate experience.

14 So I think it's great to have a variety of
15 viewpoints and life experiences and diversity, there's
16 certainly value in that. That's not what I bring to the
17 table. The case I bring is the case of an experienced
18 appellate practitioner.

19 **Q. Just a quick followup to that. Not every matter**
20 **that comes before the Court of Appeals is on an error of**
21 **law; sometimes you're being asked to review something de**
22 **novo.**

23 A. Yeah, family court cases require that standard.

24 **Q. Certainly, any sort of equitable decisions**
25 **coming out in the circuit court, all equitable decisions**

1 coming out of the family court. Explain to us what sort
2 of experiences are you going to draw upon, when you're
3 reviewing something de novo. And because, you know, that
4 does require, in my view, a breadth of experience and some
5 wisdom that goes into that, in reviewing evidence and
6 applying the law to the evidence in those situations.

7 A. Well, I've worked on equitable cases, both as an
8 appellate practitioner, and have consulted in family court
9 matters in equitable cases in private practice at the
10 trial level. I of course have experience from handling
11 equitable cases when I worked at the Supreme Court for
12 three years.

13 Notwithstanding, the de novo standard there are
14 two principles that are often cited in equitable appellate
15 decisions, which is that it is the appealing parties
16 burden to prove error, and that the appellate court will
17 not likely disregard the conclusions of the lower court,
18 because the lower court had the opportunity to view
19 testimony in person, and evaluate things like credibility.

20 You know, I may be able, if I'm on a panel of
21 Court of Appeals with Judge Konduros, who is a family
22 court judge, Judge Williams who is a family court judge.
23 You know, I may view an equitable record one way, but they
24 may say, "No, we were family court practitioners, and we
25 were family court judges, and here's what was really going

1 on behind the scenes."

2 And I wouldn't have that. But what I would have
3 is the perspective of someone who's been an appellate
4 practitioner, who can say, perhaps, in that case, or
5 another sort of case, "No, this is why the lawyer argued
6 it this way on appeal; they were constrained by these
7 principles."

8 So there may be situations where I would have to
9 rely on my colleagues, but I think that's part of good
10 appellate judging.

11 **Q. Thank you sir.**

12 SENATOR CAMPSEN: Any other questions?

13 (Hearing none.)

14 SENATOR CAMPSEN: Thank you, Mr. Hewitt.
15 That concludes this portion of our screening process. As
16 you know, the record will remain open until the formal
17 release of the report of qualifications, and you may be
18 called back at any such time as the need arises.

19 Thank you for offering. And thank you for
20 your service to South Carolina.

21 MR. HEWITT: Thank you, Mr. Chairman. I
22 thank all of you.

23 (Candidate excused.)

24 SENATOR CAMPSEN: Yeah, we'll take a quick
25 break.

1 (Off the record from 11:10 a.m. to 11:28 a.m.)

2 SENATOR CAMPSSEN: Judge Hill, welcome.

3 JUDGE HILL: Good morning.

4 SENATOR CAMPSSEN: Please raise your right
5 hand.

6 WHEREUPON:

7 THE HONORABLE DAVID GARRISON HILL, being
8 duly sworn and cautioned to speak the truth, the whole
9 truth and nothing but the truth, testifies as follows:

10 SENATOR CAMPSSEN: Have you had an
11 opportunity to review your personal data questionnaire and
12 sworn statement?

13 JUDGE HILL: Yes, sir.

14 SENATOR CAMPSSEN: Are they correct?

15 JUDGE HILL: Yes, sir.

16 SENATOR CAMPSSEN: Does anything need to be
17 changed?

18 JUDGE HILL: No, sir.

19 SENATOR CAMPSSEN: Do you object to making
20 these documents and any amendments, if applicable, a part
21 of the record of your sworn testimony?

22 JUDGE HILL: No, sir.

23 SENATOR CAMPSSEN: It will be done at this
24 point in the transcript.

25 (EXHIBIT NO. 1 - JUDICIAL MERIT SELECTION

1 COMMISSION PERSONAL DATA QUESTIONNAIRE OF THE
2 HONORABLE DAVID GARRISON HILL)

3 (EXHIBIT NO. 2 - JUDICIAL MERIT SELECTION
4 COMMISSION SWORN STATEMENT OF THE HONORABLE
5 DAVID GARRISON HILL)

6 SENATOR CAMPSSEN: Judge Hill, the Judicial
7 Merit Selection Commission has thoroughly investigated
8 your qualifications for the bench. Our inquiry has
9 focused upon nine evaluative criteria, and has included a
10 ballot box survey, a thorough study of your application
11 materials, verification of your compliance with state
12 ethics laws, a search of newspaper articles in which your
13 name appears, a study of previous screenings, a check for
14 economic conflicts of interests. We have received no
15 affidavits filed in opposition to your election, and no
16 witnesses are present to testify.

17 Do you have a brief opening statement you
18 would like to make at this time?

19 JUDGE HILL: I'm aware of you-all's busy
20 agenda. So, no, sir. Other than to thank the Commission
21 and Ms. Brogdon and Ms. Legare for the professionalism
22 through out this process.

23 SENATOR CAMPSSEN: Thank you. Please answer
24 Counsel's questions.

25 JUDGE HILL: Yes, sir.

1 MS. BROGDON: Good morning, Judge Hill.
2 How are you?

3 JUDGE HILL: Good morning, Ms. Brogdon.

4 MS. BROGDON: I would note for the record
5 that, based on the testimony contained in the candidates
6 PDQ, which has been included in the record, with Judge
7 Hill's consent, he meets the constitutional and/or
8 statutory requirements for this position regarding age,
9 residence, and years of practice.

10 EXAMINATION BY MS. BROGDON:

11 **Q. Judge Hill, why do you now want to serve as a**
12 **judge on the Court of Appeals?**

13 A. Well, I want to be on the Court of Appeals
14 because I'm committed to the preservation of the rule of
15 law; it's what sets our country apart. And fifteen years
16 as a lawyer in private practice, and twelve as a circuit
17 judge, has given me a broad and, I think, unique
18 perspective on our justice system.

19 The older one gets, and the more experience you
20 accumulate, I think the more interested you become in
21 contributing to things that are bigger and more enduring
22 than you are. And a judge at his best is a bit like a
23 finish carpenter; he works from a blueprint, a plan. He
24 didn't write the plan. He didn't design the structure.
25 He didn't decide what to build. But he gets to do

1 something that our Founders thought was essential to the
2 process; and that is, to do something very simple and
3 limited; and that is, to make sure the structure conforms
4 to the plan, ensure the integrity of the work.

5 And to do that effectively, it takes more than
6 just the ability to read the blueprint. You have to have
7 actually worked inside of the structure and know what
8 happens when you build it, and how it affects the people
9 who use it, the lawyers and judges who are going to use it
10 and the people that have to live with it, the public.

11 So you have enough practical things. And that's
12 what makes the foundation firm, that's what makes the door
13 swing true or a window hang right or a floor not buckle or
14 creak.

15 So I'd like to be on Court of Appeals to use
16 that experience that I've had for twenty-seven years in
17 the justice system, to make things more practical and to
18 have a broader perspective and to make the justice system
19 work better for the lawyers and judges and the people that
20 it ultimately serves.

21 **Q. Thank you, Judge Hill. And you touched on this**
22 **a little bit, but if you could elaborate on how you feel**
23 **your legal and professional experience thus far will**
24 **assist you to be an effective judge on the Court of**
25 **Appeals.**

1 A. Well, I think from -- the Court of Appeals is
2 generally designed to be a court that is for error
3 correction; it's not a policy-setting body. And I think
4 probably everybody in this room has read decisions of the
5 U.S. Supreme Court, that affect how trials and trial
6 procedures run. And sometimes we get those, and we can
7 see very easily that whoever wrote it probably had not
8 spent a lot of time in a courtroom, either as a judge or
9 lawyer.

10 And so I think if you're going to be on a court
11 whose primary focus is to address those trial court
12 errors, it's important that you have experience both as a
13 lawyer representing clients, and as a judge who has to
14 implement those decisions.

15 And again, it goes back to the practical common
16 sense application of the law. Because ultimately, the
17 litigants, the people who are sitting in the chairs at
18 counsel table, are the ones we need to look out for most.

19 **Q. Thank you. Judge Hill, how would you describe**
20 **your general judicial philosophy?**

21 A. Well, my philosophy is a little bit like I said
22 in my earlier statement, I think that the judge's role is
23 very limited, and I think it all has to do about how you
24 approach a text. A text being a constitution or the
25 statutes that we have to implement. My approach is, of

1 course, to be very differential to the Legislative Branch,
2 because that's the branch that our Founders decided to
3 commit the decisions about what the law should be to, not
4 the judges.

5 So I view a judge's role as very limited. And
6 insuring again that the Rule of Law is upheld, and that
7 the structure of our Republic remains intact and is
8 preserved.

9 **Q. Thank you. Judge Hill, what is your vision for**
10 **the future of our judicial system? And what changes would**
11 **you advocate, and why?**

12 A. Well, I think -- I'm an advocate of things being
13 made more simple, if possible. And that means to me,
14 personally -- in the twelve years as a circuit judge, I
15 think there are things that I've seen. No example that's
16 going to stick out to me at this particular moment. But
17 there things that I have seen, certainly, that could use
18 streamlining and simplifying and eliminating some of the
19 bureaucracy that is inevitable in some ways.

20 But I think anything can be done to kind of
21 lessen the burden on the litigants, and make the law more
22 simple and easy to understand and apply, is something I
23 would advocate for.

24 **Q. Thank you. Judge Hill, to what extent do you**
25 **believe that a judge should or should not defer to the**

1 **actions of the General Assembly?**

2 A. Well, I touched on that a little bit earlier.
3 But I think, you know, we are a government of laws and not
4 of men. And it's interesting that, that phrase came from
5 the Constitution of Massachusetts that John Adams wrote in
6 1780, and that phrase also came in the context of the
7 separation of powers. And I'm a firm believer in a strict
8 separation of powers. And as I said earlier, I believe in
9 deference to the other branches to do what the Founders
10 intended them to do. And the judiciary role is very
11 limited, but it's important. So that would be my
12 response.

13 Q. Thank you. Judge Hill, the Commission received
14 435 ballot box surveys regarding you, with 78 additional
15 comments, none of which were negative. The ballot box
16 comments contained, for example, the following positive
17 comments:

18 "A tremendous judge, particularly in a difficult
19 contested case. Will not be outworked. Exceedingly fair
20 and loves the law. I have appeared before Judge Hill,
21 regularly, for years. Judge Hill is always courteous to
22 attorneys and litigants, and he has excellent technical
23 skills and judicial acumen. Judge Hill is an astute legal
24 scholar, and fair and impartial jurist and a consummate
25 professional."

1 **Judge Hill, you indicated in your PDQ, that a**
2 **lawsuit was filed against you and your law school roommate**
3 **in 1988, in magistrate's court, by the purchaser of an**
4 **apartment complex. I didn't see this covered in your**
5 **prior screening. So could you just explain the nature of**
6 **the lawsuit?**

7 A. I think I've always disclosed that since 2003,
8 when I first applied to be a judge. My roommate, whose
9 name should not escape responsibility either, is Derrick
10 Quattlebaum. And we were sued in magistrate's court,
11 because when we moved out of the apartment, the gentleman
12 who purchased the apartment, the new owner who was not our
13 landlord, evidently was having a bad day and claimed that
14 we didn't properly clean out the apartment.

15 We counterclaimed against him in magistrate's
16 court and we got our security deposit back. And that was
17 the end of it. We didn't -- there was no finding against
18 us, or anything other than the result that we got our
19 security deposit. And he dismissed the lawsuit.

20 **Q. Thank you, Judge Hill. And you're correct, you**
21 **did disclose it in previous PDQs; it just wasn't in your**
22 **transcript, so --**

23 A. Oh, I see.

24 **Q. -- that's the only reason I brought it up today,**
25 **so --**

1 A. Yes, ma'am.

2 **Q. You have that on record for the future.**

3 A. Okay. All right.

4 **Q. And your SLED report indicated that there was a**
5 **lawsuit filed against you in 2003, in the Greenville**
6 **County of Common Pleas, by a John Eric Stancil. You were**
7 **sued as a personal representative of the Estate of a Roy**
8 **Atkins, Sr. The records reflect that the case was**
9 **dismissed. Do you want to provide any additional**
10 **information about this case?**

11 A. My memory of that is, that it was a situation
12 where a fellow lawyer in Greenville asked me to serve as a
13 personal representative, because he had a lawsuit against
14 the decedent and an estate needed to be open. And he had
15 to have somebody to serve as a personal representative,
16 because nobody had opened an estate, there was nobody to
17 open the estate.

18 So I agreed to do that and serve as personal
19 representative, just for the purpose of opening the estate
20 so he could commence his lawsuit. And once that was
21 concluded, it was dismissed. So I guess that goes under
22 the category of "no good deed goes unpunished."

23 **Q. Thank you, Judge Hill.**

24 MS. BROGDON: Mr. Chairman, at this time
25 I'd like that we request go into executive session.

1 SENATOR CAMPSSEN: Thank you.

2 SENATOR MALLOY: Move

3 SENATOR CAMPSSEN: Senator Malloy moves that
4 we go into executive session. Senator Hembree seconds.
5 Any discussion?

6 (Hearing none.)

7 SENATOR CAMPSSEN: Being no discussion,
8 we'll move immediately to vote. All in favor indicate by
9 saying "aye."

10 (At this time the members audibly say "aye.")

11 SENATOR CAMPSSEN: Opposed?

12 (Hearing none.)

13 SENATOR CAMPSSEN: The ayes have it. We are
14 now in executive session.

15 (Off the record from 11:40 a.m. to 12:05 a.m.)

16 SENATOR CAMPSSEN: We are coming out of
17 executive session. We took no action and made no
18 decision. And no votes were taken. Any further -- Ms.
19 Brogdon, housekeeping items?

20 MS. BROGDON: Thank you.

21 REEXAMINATION BY MS. BROGDON:

22 **Q. Judge Hill, since submitting your letter of**
23 **intent have you sought or received the pledge of any**
24 **legislator, either prior to this date or pending the**
25 **outcome of your hearing?**

1 A. No, ma'am.

2 **Q. Have you asked any third parties to contact**
3 **members of the General Assembly on your behalf, or are you**
4 **aware of anyone attempting to intervene in this process on**
5 **your behalf?**

6 A. No, ma'am.

7 **Q. Since submitting your letter of intent to run**
8 **for this seat, have you contacted any members of the**
9 **Commission about your candidacy?**

10 A. No, ma'am.

11 **Q. Do you understand that you're prohibited from**
12 **seeking a pledge or commitment, directly or indirectly,**
13 **until 48 hours after the formal release of the**
14 **Commission's report, and are you aware of the penalties**
15 **for violating the pledging rules?**

16 A. Yes, ma'am.

17 MS. BROGDON: I would note that the Upstate
18 Citizens Committee reported that Judge Hill is well
19 qualified in the evaluative criteria of ethical fitness,
20 professional and academic ability, character, reputation,
21 experience, and judicial temperament, and also qualified
22 in the evaluative criteria of constitutional
23 qualifications, physical health and mental stability. I
24 would note for the record that any concerns raised during
25 the investigation regarding Judge Hill were incorporated

1 into questioning today.

2 Mr. Chairman, I have no further questions.

3 SENATOR CAMPSSEN: Thank you. Any members
4 have any questions for Judge Hill? Representative
5 Rutherford.

6 REPRESENTATIVE RUTHERFORD: Mr. Chairman, I
7 just wanted to say again for the record, that it has been
8 my short time on this Commission, to not see anyone with
9 no negative comments whatsoever out of that many ballot
10 box responses, and for him to have been a judge for as
11 long as he has, and to have ruled over cases that have
12 been controversial. I've driven up to Greenville to watch
13 him preside. So that speaks volumes about his time on the
14 bench and his time as a lawyer and as a human being. And
15 I'd just like to applaud him for that on the record.

16 SENATOR CAMPSSEN: Thank you, sir.
17 Representative Smith.

18 REPRESENTATIVE SMITH: Thank you, Mr.
19 Chairman. And let me echo what Representative Rutherford
20 said. I had the opportunity to appear in front of him. I
21 also had an opportunity to read some of his orders that he
22 writes up in Greenville, which is -- you know, we still
23 refer to it in our law firm as "the deposition cat fight
24 order," which he refereed two attorneys, and probably one
25 of -- one of the well written, well reasoned, with an

1 injection of common sense than anything I've ever seen in
2 dealing with what y'all routinely have to deal with, with
3 lawyers fighting with one another over discovery or
4 depositions.

5 And so, you know, I just cannot -- I cannot
6 understate what a great job -- or overstate what a great
7 job he -- he has performed on the bench. As a circuit
8 court judge, I think you have excelled. And I think
9 that's certainly something that we need to take in
10 consideration as a Committee.

11 EXAMINATION BY REPRESENTATIVE SMITH:

12 **Q. But could you help tell us, you know, ways that**
13 **you've seen that the Appellate Courts -- and I know a lot**
14 **of it's Supreme Courts, but ways that you believe your**
15 **circuit court experience can help you in the Appellate**
16 **Court and South Carolina Court of Appeals?**

17 A. Well, I think it goes back to what I said
18 earlier about trying to give simple and clear decisions.
19 I think that the example that always sticks out to me is
20 one from U.S. Supreme Court. They had a decision, seven
21 or eight years ago, about punitive damages and there was
22 some language in the decision about how judges are
23 supposed to instruct juries about the effects of conduct
24 on other parties, and how much the jury could take that
25 into account. And it was just the most garbled, and

1 illogical in many ways, language in that decision. And it
2 really confused -- confuses judges to this day. I can't
3 imagine what it does to juries. But it's something we
4 have to read to juries, essentially.

5 And I've tried to -- just in my own experience,
6 try and break that down and make it more concise for
7 people to understand. But I think it's just an awareness
8 of what these decisions mean when you actually put them
9 into practice, and what the average juror or the average
10 client/litigant comes into court and has to grabble with.
11 The more simple and clear you can make that, I think
12 benefits everyone. And it's -- it's not hard to do that.
13 But it is hard to do it if you haven't had the experience
14 of seeing it in work and how it affects lives in a
15 practical way.

16 SENATOR CAMPSSEN: Anyone else? Mr. Safran.

17 MR. SAFRAN: Just very briefly.

18 SENATOR CAMPSSEN: Yes, sir.

19 EXAMINATION BY MR. SAFRAN:

20 **Q. Judge, I hadn't had the pleasure of appearing in**
21 **front of you. And one question I always have, and I've**
22 **expressed to some of the other judges, is that I've run**
23 **into -- or have run into, over the years, where you go to**
24 **a circuit court who may be sitting in the appellate**
25 **capacity, and the judges are reluctant to necessarily want**

1 to take --

2 SENATOR CAMPSSEN: Mr. Safran, will you
3 speak into the mic.

4 MR. SAFRAN: Oh, I'm sorry.

5 Q. The judges are somewhat reluctant to maybe take
6 a new spin on a particular proposition of law, or
7 potentially looking for an interpretation that might not
8 have been one that's been expressed in the cases up to a
9 certain point. And I think the reasoning is, is that,
10 "Look, that's for you to do at the next level as opposed
11 to me."

12 I've had others who said, "No, I'm happy to do
13 that," and have made rulings that ultimately were affirmed
14 at the next level, and may have carved out an area that
15 wasn't previously identified.

16 Where do you feel like you sit in that? 'Cause
17 I know you may -- I may just be completely oblivious to
18 it, but you may have already been somebody that was very,
19 I guess, willing to take those type of steps. Or maybe
20 you've been the others who have said, "It's really not my
21 role."

22 In terms of transitioning to an appellate court,
23 how do you see any changes that would occur in terms of
24 how your thought process would go in situations like that?

25 A. Well, it would have to be, in my view, some area

1 where there was ambiguity, there was no clear precedent,
2 and there was some reasonable construction of whatever
3 text it is that you're dealing with, that had not been
4 addressed either by the Legislature or by a higher court.

5 I don't think my view of that would -- would
6 change. I understand what you're saying that -- that has
7 a lot to do with, I think, a judge's willingness and
8 ability to listen. Because if you have a good lawyer
9 who's making these arguments, and you don't listen and you
10 just dismiss it, offhand, because there's no clear
11 precedent, and you don't want to stick your nose out that
12 far, I don't -- I don't -- I don't go along with that.

13 **Q. Okay.**

14 A. I go along with -- if the lawyers who know a lot
15 more about the case than I do have a reasonable persuasive
16 view that is sound, and I would certainly listen to it and
17 consider it, and take it into account. And I wouldn't be
18 afraid of making a decision in an area where there was
19 none. But I would be aware of the limited role I have and
20 the confines a judge is supposed to work in.

21 **Q. Sure. Thank you very much.**

22 A. Yes, sir.

23 SENATOR CAMPSSEN: Mr. Howard.

24 MR. HOWARD: Good afternoon, Judge.

25 JUDGE HILL: Oh, good afternoon. Yes, sir.

1 MR. HOWARD: I just want to take one point.
2 As a -- as a member of the Greenville Bar, and as a
3 practitioner in Greenville, I just want to echo what Mr.
4 Smith and Mr. Rutherford -- Representative Smith, and
5 Representative Rutherford stated earlier, which is you've
6 been on the bench for as -- almost as long as I've been
7 practicing. And I think I echo most of the Greenville Bar
8 in stating that I've always found you to be an ethical,
9 upright, patient, capable jurist, and somebody who
10 exhibits exactly what I've always thought of when I think
11 of a judge.

12 And I just want to --

13 JUDGE HILL: You're very kind.

14 MR. HOWARD: -- put that on the record.
15 Because as a practitioner from Greenville, who's sitting
16 here on this committee, I think it's worth noting that.
17 And most definitely a friend to the bench and the Bar. So
18 thank you for your service.

19 JUDGE HILL: Thank you, Mr. Howard.

20 SENATOR CAMPSSEN: Any other questions?

21 (Hearing none.)

22 SENATOR CAMPSSEN: Judge Hill, thank you for
23 being with us today. That concludes this portion of our
24 screening process. As you know, the record will remain
25 open until the formal release of the report of

1 qualifications, and you may be called back at such time if
2 the need arises.

3 I thank you for offering. And thank you
4 for your service to South Carolina.

5 JUDGE HILL: Thank you, Mr. Chairman, and
6 members of the Committee.

7 SENATOR CAMPSSEN: Thank you.

8 (Candidate excused.)

9 SENATOR CAMPSSEN: Thank you, Mr. Josey, for
10 being with us. Please raise your right hand.

11 WHEREUPON:

12 JON RENE JOSEY, being duly sworn and
13 cautioned to speak the truth, the whole truth and nothing
14 but the truth, testifies as follows:

15 SENATOR CAMPSSEN: Have you had an
16 opportunity to review your personal data questionnaire and
17 sworn statement?

18 MR. JOSEY: I have.

19 SENATOR CAMPSSEN: Are they correct?

20 MR. JOSEY: Yes, sir.

21 SENATOR CAMPSSEN: Does anything need to be
22 changed?

23 MR. JOSEY: No, sir.

24 SENATOR CAMPSSEN: Do you object to our
25 making these documents, and any amendments, if applicable,

1 a part of the record for your sworn testimony?

2 MR. JOSEY: Not at all.

3 SENATOR CAMPSSEN: Okay. It will be done at
4 this point in the -- in the transcript?

5 (EXHIBIT NO. 1 - JUDICIAL MERIT SELECTION
6 COMMISSION PERSONAL DATA QUESTIONNAIRE OF JON
7 RENE JOSEY)

8 (EXHIBIT NO. 2 - JUDICIAL MERIT SELECTION
9 COMMISSION SWORN STATEMENT OF JON RENE JOSEY)

10 SENATOR CAMPSSEN: Mr. Josey, the Judicial
11 Merit Selection Commission has thoroughly investigated
12 your qualifications for the bench. Our inquiry has
13 focused upon nine evaluative criteria, and has included a
14 ballot box survey, a thorough study of your application
15 materials, verification of your compliance with state
16 ethics laws, a search of newspaper articles in which your
17 name appears, a study of previous screenings, a check for
18 economic conflicts of interest. We have received no
19 affidavits filed in opposition to your election, and no
20 witnesses are present to testify.

21 Do you have a brief opening statement you
22 would like to make at this time?

23 MR. JOSEY: I did jot a few notes down,
24 Senator.

25 After thirty years of diverse, and, I

1 think, successful practice, I want to give something back
2 to our profession and to the state. I've got partners
3 that ask me why I put myself through this, and why I would
4 want to, conceivably, work more and make less. And the
5 fact that they even ask me that question is part of the
6 problem with our profession, I think. Our profession has
7 lost its service identity. And that's probably why we
8 don't have more folks offer for office.

9 And I'm worried about our profession. There's a
10 lot of things I can't address, I can't fix the market
11 forces that affect the legal profession. But I would like
12 to have a small -- play a small role by being a good
13 mentor to law clerks, by writing clear opinions that
14 provide guidance to the Bar, and helping give correct
15 solutions to the cases that come before us.

16 Selfishly, I also seek this office because I
17 think it will give me a greater degree of personal
18 satisfaction. I enjoy analyzing facts and issues and
19 looking for the correct solution. And I enjoy writing and
20 trying to write a clear direction to those solutions. The
21 understandable reality is, though, that most clients are
22 more interested in controlling cost and getting results;
23 and that's not always consistent with correctness or
24 clarity.

25 And so I'm seeking greater personal

1 satisfaction. I try not to take myself seriously, but I
2 do take my clients and their cases seriously. And I tend
3 to get difficult cases with hard facts, and I try to have
4 the wisdom and grace to advocate for them zealously but
5 admit when I'm wrong.

6 I think I'm well grounded with a great deal of
7 family support, extended family, close family. My wife of
8 thirty-one years often has come with me. She's teaching a
9 class this morning at Tech. But I've got great kids.
10 I've got a great community of faith and I think that I
11 have a lot to offer, and I sincerely ask for your
12 consideration.

13 SENATOR CAMPSSEN: Thank you.

14 MR. DAVIDSON: Thank you, Mr. Chairman.

15 SENATOR CAMPSSEN: Counsel will ask you some
16 questions.

17 MR. JOSEY: Yes, sir.

18 MR. DAVIDSON: I note for the record that,
19 based on the testimony contained in the candidate's PDQ,
20 which has been included in the record with the candidate's
21 consent, Mr. Josey meets the constitutional and statutory
22 requirements for this position regarding age, residence,
23 and years of practice.

24 EXAMINATION BY MR. DAVIDSON:

25 **Q. Mr. Josey, could you please explain to the**

1 **Commission why you would like to serve on the Court of**
2 **Appeals?**

3 A. Well, I did a little in my opening statement.
4 But I have both selfish reasons and service reasons. As I
5 indicated, I think our profession needs people to offer
6 for public service, because there are a lot of negative
7 forces on our profession; we've got a lot of lawyers
8 trying to do a little bit of work, and we've got market
9 forces that are affecting the way we practice sometimes.

10 And so I want to give back and I want to add to
11 the professionalism of our legal system. But selfishly, I
12 get a lot of satisfaction out of solving problems and
13 writing and trying to provide clarity. And so those are
14 the reasons I seek this office.

15 **Q. Thank you. and I understand you briefly covered**
16 **this in your opening statement, but could you -- how do**
17 **you feel your legal and professional experience thus far**
18 **will assist you to be an effective judge on the Court of**
19 **Appeals?**

20 A. Well, and -- actually, I was chatting with Judge
21 Lee upstairs. I'm often asked about not having judicial
22 experience before. I think that my experience, having
23 practiced in the appellate courts, but also in criminal
24 court, civil court, family court, I've worked as a
25 prosecutor, I've worked as a criminal defense lawyer,

1 that, that breadth of experience, all of which funnels
2 through the Court of Appeals, makes me well suited, and
3 will serve me well on the Court of Appeals.

4 **Q. How would you describe your general judicial**
5 **philosophy?**

6 A. Well, I guess I would say that cases that -- I
7 try to -- you know, there's a role for judges to play and
8 there's a role for lawyers to play; sometimes judges like
9 to be the lawyers. I don't think that way. I think that
10 folks who would come before me would have a narrow issue
11 that needed to be addressed and needed to be solved, and I
12 would try to do it in the most direct way possible, based
13 on the precedent that existed, and not go anywhere I
14 didn't need to go.

15 So, you know, I kind of resist labels. But I
16 would say it's a conservative philosophy, that, you know,
17 if we have narrow issues that are brought to us, you
18 address those issues, you try to provide clear guidance on
19 those issues, and a resolution of those issues, and then
20 you get out of the way.

21 **Q. Thank you. What is your vision for the future**
22 **of our judicial system? And what changes would you**
23 **advocate, and why?**

24 A. That's a tough question. And that's part of
25 what separates me from the other lawyers who serve in this

1 room, is that I don't see myself as a policy person --
2 policy questions. I like narrow questions and not policy
3 questions. I would say that I think our judicial system
4 needs to be funded better, because I think that's also a
5 factor in a lot of folks not offering for service.

6 And you see overcrowded dockets in places, and
7 so I guess I have a vision of -- an ideal vision of a more
8 independent, fully-funded judiciary that does its part as
9 the third branch of government, and stays out of the way
10 of the other two branches.

11 **Q. To what extent do you believe that a judge**
12 **should or should not defer to the actions of the General**
13 **Assembly?**

14 A. Well, of course when the General Assembly has
15 spoken on a -- made a policy decision, passed a statute,
16 that statute needs to be followed. It's not the judge's
17 place to question why or rethink the policy, but only to
18 interpret and apply a particular statutory act to a set of
19 facts.

20 **Q. Thank you for those responses. Mr. Josey, the**
21 **Commission received 277 ballot box surveys regarding your**
22 **candidacy, with 26 additional comments. In the ballot box**
23 **survey, for example, contained the following positive**
24 **comments:**

25 "His intellect, temperament, and true desire to

1 serve our state will make him a great judge. He belongs
2 in the Appellate Court. As a teacher for this and future
3 generations, I cannot say enough about his great legal
4 mind." And lastly, "Mr. Josey, an excellent, principled
5 attorney, with an impeccable reputation, and would be an
6 excellent addition to the Court of Appeals."

7 However, ten of the written comments expressed
8 concerns. Two of the comments questioned your academic
9 ability. What response would you offer to those concerns?

10 A. I don't think they're valid. I know that I
11 don't know everything. And I think that's actually one of
12 my strengths; I recognize when I don't know everything and
13 need to study, or need to get help or seek guidance from
14 other folks. You know, I can't explain why those folks
15 thought that, or why they expressed that, other than an
16 agenda on their part.

17 Q. Two of the comments questioned your temperament,
18 one of which cited a short fuse. What response would you
19 offer to those concerns?

20 A. Again, that I'm -- I'm not perfect. I have, I
21 think, an appropriate judicial temperament. I'm not maybe
22 always as patient with conduct that wastes time of
23 litigants in the court. But I also know that, you know,
24 our profession depends on people keeping their cool and
25 addressing issues in a guarded, cautious, structured

1 fashion. You know, I'm not perfect, but I think I have an
2 appropriate temperament.

3 **Q. Thank you. Four of the written comments**
4 **expressed concern over the number of times you have sought**
5 **judicial office. What response would you offer to those**
6 **concerns?**

7 A. I'm ready to quit when -- when the Legislature's
8 ready to quit. Well, it goes back -- and I don't --
9 again, I don't -- try not to take myself too seriously.
10 But if I didn't feel called to do this, and if I didn't
11 really think I would be good at it and enjoy it, I would
12 quit trying. Because it's not -- nothing against the
13 people in this room, but the process is arduous, and when
14 you're trying to practice law and make a living it's even
15 more arduous.

16 I know Mr. Safran's got other things he could
17 probably doing back at his office. I've got other things.
18 I've got clients texting me on the way over here. But
19 it's important to me, and I think it's important to the
20 system to have good people offer. And maybe this will be
21 the right time.

22 **Q. Lastly, one comment alleged that you were**
23 **grossly inappropriate toward many while serving as U.S.**
24 **Attorney. I note for the record -- and as you know, I**
25 **contacted a member of your staff, and they verified that**

1 **there's no basis to that comment. Nonetheless, what**
2 **response would you offer to that comment?**

3 A. Well, I know you contacted somebody, and also
4 for the benefit of the rest of the Commission, one of my
5 letters of five reference letters is from Scott Schools,
6 who was an assistant U.S. Attorney, while I served as U.S.
7 Attorney, and we tried cases together. An he's actually
8 went on to serve in the Justice Department as a U.S.
9 Attorney, and in several different districts as a Deputy
10 Attorney General, and he came back to private practice and
11 as of two weeks ago, he's gone back to the Justice
12 Department.

13 But anyway, it doesn't have any validity. You
14 know, when you serve in a capacity like that, you don't
15 make everybody happy. I don't know what I made --
16 somebody unhappy. But we take tough cases and prosecute
17 folks who don't want to be prosecuted. We took civil
18 cases against the Medical University, and all kinds of
19 different defendants that made folks uncomfortable. You
20 don't do it lightly, and it may have rubbed somebody the
21 wrong way.

22 But I also have -- my gut tells me that, that's
23 somebody who didn't even know me when I was U.S. Attorney.
24 That's what my gut tells me.

25 **Q. Thank you. At this time I'm going to go through**

1 four quick housekeeping questions.

2 A. Sure.

3 Q. Since submitting your letter of intent have your
4 sought or received the pledge of any legislator, either
5 prior to this day or pending the outcome of your
6 screening?

7 A. I have not.

8 Q. Have you asked any third parties to contact
9 members of the General Assembly on your behalf, or are you
10 aware of anyone attempting to intervene in this process on
11 your behalf?

12 A. No.

13 Q. Since submitting your letter of intent to run
14 for this seat, have you contacted any members of the
15 Commission about your candidacy?

16 A. I have not.

17 Q. Do you understand that you are prohibited from
18 seeking a pledge or commitment, directly or indirectly,
19 until 48 hours after the formal release of the
20 Commission's Report, and are you aware of the penalties
21 for violating the pledging rules?

22 A. I do understand that.

23 MR. DAVIDSON: I would note that the Pee
24 Dee Citizens Committee reported that Mr. Josey is
25 qualified in the evaluative criteria of constitutional

1 qualifications, physical health and mental stability, and
2 well qualified in remaining evaluative criteria of ethical
3 fitness, professional and academic ability, character,
4 reputation, experience, and judicial temperament. I would
5 note for the record, that any concerns raised during the
6 investigation regarding Mr. Josey were incorporated into
7 my questioning today.

8 Mr. Chairman, I have no further questions.

9 SENATOR CAMPSSEN: Thank you. Thank you.

10 Members -- any members have any questions?

11 (Hearing none.)

12 EXAMINATION BY SENATOR CAMPSSEN:

13 **Q. Mr. Josey, I have one question, since you're**
14 **seeking an Appellate Court position. What is your**
15 **personal opinion as to when making rulings of law crosses**
16 **the line into lawmaking?**

17 A. Well, it's actually sort of -- almost a strange
18 concept to me. In a lot of my appellate work -- and I've
19 had a number of cases where I have sought appellate
20 decisions that applied the Legislature's statutes to a
21 particular set of facts that my client brought to me, and
22 I always tried to fall back on the rules of construction,
23 and the rules that -- you know, when the legislative body
24 has spoken in a particular area, it has spoken. And
25 nobody else needs to speak.

1 And I guess the court goes too far, particularly
2 if it says something contrary to what the Legislature has
3 said, or if it tries to fill a gap that maybe is better
4 filled by the Legislature. And I think sometimes maybe an
5 activist judge maybe tries to fill a gap, when the
6 appropriate thing to do is just step back and refrain from
7 stepping into the gap, and let the Legislature fill the
8 gap.

9 In private practice I've never had a case where
10 I tried to get a court to legislate, because I didn't
11 think it was appropriate. I always thought my best
12 argument was try to use the legislation that exists, to
13 fit facts in the way I want them to fit. So I'm used to
14 taking a narrow approach.

15 And again, I think the -- to answer your
16 question, just anytime a judge tries to fill a gap it's
17 not the judge's to fill, then he's going too far.

18 **Q. Thank you.**

19 SENATOR CAMPSEN: Any questions from
20 members?

21 (Hearing none.)

22 SENATOR CAMPSEN: Okay. Mr. Josey, thank
23 you for being with us today. That concludes this portion
24 of our screening process. As you know, the record will
25 remain open until the formal release of the report of

1 qualifications, and you may be called back at such time if
2 the need arises.

3 I thank you for offering. And thank you
4 for your service to South Carolina.

5 MR. JOSEY: Thank you, Senator. Thank you,
6 everybody.

7 (Candidate excused.)

8 SENATOR CAMPSSEN: Good morning, Judge Lee.

9 JUDGE LEE: Good morning.

10 SENATOR CAMPSSEN: Would you please raise
11 your right hand.

12 WHEREUPON:

13 THE HONORABLE ALISON RENEE LEE, being duly
14 sworn and cautioned to speak the truth, the whole truth
15 and nothing but the truth, testifies as follows:

16 SENATOR CAMPSSEN: Have you had an
17 opportunity to review your personal data questionnaire and
18 sworn statement?

19 JUDGE LEE: I did. I have -- I have
20 reviewed it.

21 SENATOR CAMPSSEN: Are they correct?

22 JUDGE HILL: Yes, they are.

23 SENATOR CAMPSSEN: Does anything need to be
24 changed?

25 JUDGE HILL: Not that I'm aware of, from

1 reviewing it yesterday and today.

2 SENATOR CAMPSSEN: Do you object to our
3 making these documents, and any amendments, if applicable,
4 a part of the record of your sworn testimony?

5 JUDGE HILL: No.

6 SENATOR CAMPSSEN: It will be done at this
7 point in the transcript.

8 (EXHIBIT NO. 1 - JUDICIAL MERIT SELECTION
9 COMMISSION PERSONAL DATA QUESTIONNAIRE OF THE
10 HONORABLE ALISON RENEE LEE)

11 (EXHIBIT NO. 2 - JUDICIAL MERIT SELECTION
12 COMMISSION SWORN STATEMENT OF THE HONORABLE
13 ALISON RENEE LEE)

14 SENATOR CAMPSSEN: Judge Lee, the Judicial
15 Merit Selection Commission has thoroughly investigated
16 your qualifications for the bench. Our inquiry has
17 focused on nine evaluative criteria, and has included a
18 ballot box survey, a thorough study of your application
19 materials, verification of your compliance with state
20 ethics laws, a search of newspaper articles in which your
21 name appears, a study of previous screenings, a check for
22 economic conflicts of interest. We have received no
23 affidavits filed in opposition to your election, and no
24 witnesses are present to testify.

25 Do you have a brief opening statement you

1 would like to make at this time?

2 JUDGE LEE: I've considered making an
3 opening, but I've decided not to make one at this time.
4 Thank you for the opportunity.

5 SENATOR CAMPSER: Please answer Counsel's
6 questions.

7 MR. GENTRY: Thank you, Mr. Chairman. I
8 note for the record, that based on the testimony contained
9 in the candidate's PDQ, which has been included in the
10 record with the candidate's consent, Judge Lee meets the
11 constitutional and/or statutory requirements for this
12 position regarding age, residence, and years of practice.

13 EXAMINATION BY MR. GENTRY:

14 **Q. Judge Lee, why do you now want to serve as a**
15 **judge on the Court of Appeals?**

16 A. First of all, I've been a licensed member of the
17 Bar since 1982, and all but five of those years have been
18 in public service. And so I'd like to continue my career
19 in public service.

20 I think it's been a privilege to -- I've had the
21 privilege to serve in both legislative and judicial and
22 the executive branches of government. And I began my
23 career as a law clerk, serving as a law clerk before two
24 appellate judges.

25 I'd like to be able to return to the area where

1 I started. And returning to work on the Court of Appeals,
2 I think it would give me the opportunity to go back to
3 developing the research and writing that I enjoy. And I
4 think I'm ready for a new challenge. I've been on the --
5 on the circuit bench for seventeen years, and I would like
6 to be able to go and conclude my legal career on the Court
7 of Appeals. And besides that, I think I'm qualified.

8 **Q. How do you feel your legal and professional**
9 **experience thus far will assist you to be an effective**
10 **judge on the Court of Appeals?**

11 A. As I've indicated, I started out as a law clerk,
12 so that gave me the basic understandings of what it was
13 like to be on the Appellate Court, through the research
14 and writing I did with appellate judges. I also had the
15 opportunity to practice law for five years.

16 Subsequent to that, I worked with the -- I just
17 had a blank. I worked at the legislative council drafting
18 bills, so that gave me the opportunity to understand from
19 the legislative point of view what goes into drafting
20 legislation, and the process for that.

21 Additionally, as an administrative law judge,
22 I've had the opportunity to handle cases, many of which
23 are the type of cases that are now before the Appellate
24 Court, and the jurisdiction that the Appellate Court has.

25 Further, with the circuit court, I handled

1 appeals both from the lower courts, as well as some of the
2 agencies that now report -- have their appeals go directly
3 to the Appellate Court; for example, Workers' Comp
4 Commission, the Employment and Workforce Commission, the
5 zoning issues and some of the other areas that are now
6 areas in which the Court of Appeals now handles those
7 cases.

8 And so I think that has made me qualified in
9 order to be able to handle those. I'm familiar with the
10 jurisdiction that they've had, and I believe that I have
11 the skills -- the legal research and writing skills that
12 will enable me to be able to be on the court and consider
13 those cases along with my colleagues.

14 **Q. How would you describe your general judicial**
15 **philosophy?**

16 A. Generally, I think my philosophy is -- what I
17 try to do is, I try to listen to everything that's
18 presented to me. I try to ask questions when they are
19 appropriate. I like to study the law. I like to do the
20 research and the writing. I must admit that my time on
21 the court of -- the circuit court, I've not had as much
22 writing skills as I'd liked to have had, simply because of
23 the volume of cases that we handle.

24 But my philosophy is that I have to follow the
25 law that applies, I have to listen impartially to the

1 facts, and determine what issues are there, and to be able
2 to address those issues fairly and impartially.

3 **Q. What's your vision for the future of the**
4 **judicial system? And what changes would you advocate, if**
5 **any, and why?**

6 A. In South Carolina, I think the judicial system
7 is operating very well. There are some -- some things
8 that I note, I guess because of my experience on circuit
9 court, primarily with the case load that the circuit
10 judges have, I'm not sure there's a way to change those.
11 I know that with the development of specialized courts, it
12 does alleviate some of the work load that the circuit
13 judges have.

14 And I'm not sure that just adding additional
15 judges will resolve that problem, based upon the resources
16 that the various counties have in terms of being able to
17 provide space in courtrooms for holding -- for holding
18 court or base -- based upon the ability to be able to have
19 the other resources, court reporters.

20 But I think that the circuit judges are somewhat
21 overloaded in the work because of the workload. But I
22 think that the judicial system, through the head of our
23 judicial system, the Chief Justice is making strides to
24 try and alleviate some of that. And I think the
25 beneficial part of the specialized courts are there to

1 help in that matter.

2 **Q. What extent do you believe that a judge should**
3 **or should not defer to the actions of the General**
4 **Assembly?**

5 A. I don't believe in judicial activism. I think
6 the General Assembly is designated to enact the laws, and
7 that we are the official branch that interprets it and
8 applies it. I think that -- you know, when I worked for
9 legislative council on drafting bills, I was instructed at
10 the time not to talk about -- or not to discuss
11 constitutionality of specific legislation -- specific
12 legislation, unless I was asked about it.

13 I think it would be helpful to have additional
14 lawyers as legislators to help understand the impact of
15 what legislation may have in -- on the general public and
16 handling cases. But I don't think there's a role for the
17 judges to legislate or interfere with the legislative
18 branch of government at all.

19 **Q. The Commission received 596 ballot box surveys**
20 **regarding your campaign, with 74 additional comments. The**
21 **ballot box survey, for example, contained the following**
22 **positive comments:**

23 "A conscientious, intelligent, and professional
24 judge with an outstanding judicial temperament. She would
25 make an excellent appellate judge."

1 **Ten of the written comments expressed concerns.**
2 **A couple of respondents complained that you may lack the**
3 **legal abilities to serve on the Appellate Court. What**
4 **response would you offer to this concern**

5 A. As indicated, I believe that I have the ability
6 to be able to be on the Appellate Court. I think I'm
7 familiar with the -- doing legal research and writing. As
8 I've stated, I think my time on the circuit court, I had
9 less of an opportunity to spend a lot of time in order to
10 be able to write. But I still do my legal research.

11 As you probably -- as most of you are probably
12 well aware, for a circuit judge you are often required to
13 make decisions that are immediate, without the benefit of
14 a lot of reflection and thought, especially during jury
15 trials.

16 I think that I do -- I do try to prepare in
17 advance, and I do ask for information ahead of time in an
18 effort to try to address some of those issues that may
19 come up during the course of the trial. And I try and do
20 my research on those issues.

21 I think as far as the Court of Appeals is
22 concerned, again I think I have experience in handling
23 those cases which will come before the Court of Appeals
24 and the jurisdiction of the Court of Appeals.

25 I think the experience as a circuit court judge

1 gives me the opportunity to understand what the circuit
2 judge faces during the course of a trial, and to be able
3 to help -- or at least address those issues where there
4 may be some confusion about the application of a
5 particular point of law.

6 **Q. Also, a couple of respondents expressed concern**
7 **regarding your demeanor and temperament in the courtroom.**
8 **What response would you offer to those concerns?**

9 A. I heard the very same thing from the Bar
10 Committee. And frankly, I'm surprised. I pride myself on
11 being very impartial, that I remain even-tempered and calm
12 in court. I don't believe that there's a place to be
13 angry or upset.

14 I must say that I do hold a standard for the
15 litigants and for their attorneys in how they present
16 themselves in court, and I try and be fair and impartial
17 and I try to make sure that I have the appropriate
18 demeanor and temperament in dealing with them.

19 So I am -- I'm a little bit surprised by those
20 comments. I think that's probably the first I've -- this
21 is the first time I've heard those comments. I do have
22 expectations, as I stated, as to how the court runs -- the
23 courtroom runs. And I apply that to everyone. And I
24 apply that -- the same way across the board.

25 And I think it's not about my ego, or having

1 someone defer to me. To me, it's about decorum in the
2 courtroom and what's expected and how to be able to -- to
3 be able to manage the courtroom, and to handle the
4 situations that come up.

5 **Q. A couple of respondents were concerned that you**
6 **might show bias for or against various parties. What**
7 **response would you offer to those concerns?**

8 A. I'm again surprised about that as well. You
9 know, the judge is not to exhibit any bias towards either
10 -- any party that appears. We are supposed to be
11 impartial, and to rule and to judge impartially.

12 I would have to question further, exactly what
13 they mean by "bias." I think sometimes people may
14 misconstrue rulings as having a bias towards one side or
15 the other. I know that in criminal cases, I do -- since
16 the State has the burden, I do expect there to be a higher
17 quality and a better argument in pursuing the prosecution
18 of an individual because of the standards of -- that they
19 have to prove.

20 But I don't think that, that creates a bias
21 towards one side or another. And oftentimes a bias is
22 just a personal view of what they perceived that I ruled,
23 and how I've ruled.

24 **Q. You indicated in your PDQ, that in 2016 you were**
25 **named in a lawsuit in your capacity as a circuit court**

1 **judge. What's the nature of this lawsuit and disposition,**
2 **if any?**

3 A. I was informed by the attorney who was appointed
4 to -- hired to represent the Insurance Reserve Fund about
5 the lawsuit. I know that it involves several prisoners
6 within the Department of Corrections. As far as -- I've
7 never been served with the lawsuit, so I have no idea as
8 what the allegations are in the lawsuit.

9 As I said, I was informed about the lawsuit from
10 them. As far I know it's still pending, but I cannot tell
11 you -- I've not talked to the attorney or had any
12 communications with the attorney as to the status of the
13 case.

14 **Q. Thank you. Judge Lee, since submitting your**
15 **letter of intent have you sought or received the pledge**
16 **of any legislator, either prior to this day or pending the**
17 **outcome of your screening?**

18 A. No, I have not.

19 **Q. Have you asked any third parties to contact**
20 **members of the General Assembly on your behalf, or are you**
21 **aware of anyone attempting to intervene in the process on**
22 **your behalf?**

23 A. Not that I'm aware of. No, I have not.

24 **Q. Since submitting your letter of intent to run**
25 **for the seat, have you contacted any members of the**

1 **Commission about your candidacy?**

2 A. I'm sure I have -- I've spoken to several
3 members of the Commission, just to inform them that I was
4 a candidate. But beyond that, I've not had any
5 conversations about my particular candidacy.

6 **Q. Do you understand that you are prohibited from**
7 **seeking a pledge or commitment, directly or indirectly,**
8 **until 48 hours after the formal release of the**
9 **Commission's Report, and are you aware of the penalties**
10 **for violating the pledging rules?**

11 A. Yes, I'm aware of that.

12 MR. GENTRY: I would note that the Midlands
13 Citizens Committee found Judge Lee to be well qualified in
14 the evaluative criteria of ethical fitness, professional
15 and academic ability, character, reputation, experience,
16 and judicial temperament, and qualified in remaining
17 evaluative criteria of constitutional qualifications,
18 physical health and mental stability.

19 The Committee commented, "Judge Lee has the
20 necessary experience, temperament, and intellect to be an
21 outstanding Appeals Court judge. She has served with
22 distinction on the circuit court bench for many years.
23 She has vast experience in both criminal and civil law,
24 and acts as an appeals judge in matters appealed from
25 summary court. Judge Lee is an outstanding candidate for

1 the South Carolina Court of Appeals."

2 Mr. Chairman, I would just note for the
3 record that any concerns raised during the investigation
4 regarding the candidate were incorporated into the
5 questioning today. I have no further questions.

6 SENATOR CAMPSEN: Thank you. Do any
7 members have questions for Judge Lee? Senator Hembree.

8 EXAMINATION BY SENATOR HEMBREE:

9 Q. Thank you Mr. Chairman. Good afternoon, Judge
10 Lee.

11 A. Good afternoon. How are you?

12 Q. I'm doing fine, thank you. I'm having a good
13 day so far. Just a couple of quick questions, 'cause you
14 covered several things that I was interested in. You
15 touched on some of the issues facing the judicial branch,
16 and I think the question that Mr. Gentry asked you was
17 about your vision -- sort of vision for the Court of
18 Appeals. But you've had such great experience on the --
19 on the bench and got to see -- you kind of been there,
20 done that, seen it all.

21 What recommendations would you give to us as
22 legislators, or just generally as lawyers, to improve and
23 build on -- as you said, our judiciary is strong in South
24 Carolina, and I would agree with that -- but to build on
25 that judiciary.

1 A. My colleagues are all very dedicated members of
2 the judiciary, and I think we all work very hard in order
3 to carry our load and do the things that we need to do.
4 As I've indicated, I think that we are a little bit
5 overloaded.

6 **Q. Would it be on the criminal side or the civil**
7 **side?**

8 A. I think it's both.

9 **Q. Okay.**

10 A. I think -- I think because of mandatory
11 mediation, the civil side, there's less going on. But
12 there's certainly more than enough to handle on the
13 criminal side. And most of the time, at least lately, I
14 have been in Richland County --

15 **Q. God bless you. Now I understand how your answer**
16 **-- why you're answering. But keep going. I'm with you.**

17 A. -- where we run, you know, two -- two criminal
18 courts, two civil courts every single week. And usually
19 we have a judge that's assigned to do pleas and judge
20 that's assigned to do trials. And I think that works very
21 well.

22 There are times, I think, when sometimes there's
23 not the organization that's there. I think that there are
24 some changes -- in the solicitor's office, I've been very
25 mindful of that, and there are changes. A lot of the -- a

1 lot of the counties I have been to, outside of Richland
2 County, are very well organize and they really keep the
3 flow going.

4 I would suggest that, perhaps, a more -- and I'm
5 not sure that the Legislature can do anything about that,
6 but perhaps a more strenuous rotation system. Because I
7 know there are counties that may have less -- less court,
8 they have less work, or they may be a little bit more
9 backlogged to be able to really manage sending judges to
10 where the backlogs are.

11 Again, I understand that, that's a factor of
12 whether there's a courtroom available, whether there's
13 courtroom staff. So I'm not sure I have a specific
14 recommendation that I can pass onto you at this particular
15 point.

16 I think that everyone is quite aware of the
17 challenges facing the judicial department, and I think, as
18 I stated, the -- that the additional specialized courts
19 have kind of helped to alleviate some of that.

20 **Q. Is there -- I've heard some references to this**
21 **in the course of our interviews in the last two days, but**
22 **-- and I've heard these references in other contexts about**
23 **-- concerns about the court reporters. Is there -- is it**
24 **-- is that issue kind of -- I mean, it seems like I heard**
25 **there were some problems with getting -- you know, you**

1 could get a judge there, you couldn't get the court
2 reporter there. And I know -- I want to say it might be
3 the family court that was suffering from this problem,
4 more than circuit court. But is there a -- is that issue
5 resolved or --

6 A. I think it's an ongoing issue. I think that
7 there's a shortage of court reporters, and that may have
8 to do with the standards that the judicial department has
9 for the court reporters, and what qualifications they have
10 to meet.

11 I frequently hear from court reporters that
12 there are a lot of qualified court reporters, but because
13 of the licensing requirements, or the fact that they need
14 to be certified in some form or fashion, that, that
15 reduces the number that are available to them.

16 I've often wondered why we have court reporters
17 for non-jury. Because generally, those are not records
18 that go up on appeal; that generally while there -- while
19 there may be some use of motion hearings in order to be
20 able to -- to do the appeals, that by and large, the
21 majority of what we do are motions that will not be a part
22 of a record when they go up.

23 And so, perhaps, maybe for summary judgement
24 motions, it may be more important. Perhaps for damages
25 hearings, in order to have a record when you're taking

1 testimony. But there are lot motions, I think, that we
2 really don't need a court reporter in that. And I know
3 that the judicial department is talking about the digital
4 system, digital recording system. I think that, that
5 could work very well, as long as you've got the ability to
6 be able to have a good record.

7 The problem I have with such recordings is what
8 I get from the lower courts, oftentimes those digital
9 recordings are transcribed by somebody else; that if
10 they're the -- if you can't hear what they're saying --

11 **Q. It's a quality issue.**

12 A. The quality -- there is a quality issue. But I
13 think if you work on those quality issues, I think it
14 could be very effective. And I'm not advocating replacing
15 --

16 **Q. I understand.**

17 A. -- the court reporters. I don't want them to
18 think I'm -- because I think they are needed, but I just
19 think they're -- there's some situations where they're
20 just not needed for motions.

21 **Q. Is it -- you know, and I'm -- and I'm just --**
22 **I'm asking not to -- just to kind of get your expertise,**
23 **kind of thinking about other issues. But it sounds like**
24 **you're saying -- and it's -- that the docket issues,**
25 **particularly the criminal docket, are -- it depends on**

1 **which circuit you're in.**

2 A. It does.

3 **Q. Okay. That's -- that's helpful.**

4 A. That's been -- that's been my -- my experience,
5 is that it really depends on the circuit.

6 **Q. Are there any -- do you have any weaknesses as a**
7 **judge, that you wish to share with us? We know a lot of**
8 **strengths, but...**

9 A. I would say -- and I -- and I hesitate to say --
10 when I was an administrative law judge, I did almost all
11 my own research and writing, and everything that I did
12 required some type of an order. I had to do the findings
13 of fact and the conclusions of law.

14 I think being on circuit court in some ways
15 dumbed me down, because the idea was that -- I started off
16 trying to do the same things that I did on the ALJ, and
17 that caused a backlog in my workload, for which I've been
18 criticized for, and which I understood that there was a
19 process of slowing down the wheels of justice by trying to
20 write an order on everything.

21 And so I learned that there are certain things
22 that you just do a form order on, and you just say, you
23 know, motion denied or whatever, and go forward; and that
24 there are only certain cases, or certain types of motions
25 that require a formal order.

1 And so I think in that way, I got away from a
2 lot of that intellectual discussion in a written form. I
3 still read the information, I still may require and
4 request information for me to consider, and I still do the
5 research for that part, but I don't -- I'm not required to
6 formalize and to express the reasons why I reached that
7 conclusion.

8 And I -- and I think that's one of the things
9 that I would look forward to, in going to the Court of
10 Appeals, and being able to -- to recapture that. And I
11 think, you know, over time you -- I noticed that there's
12 sometimes when I develop a little bit less patience.

13 And I have to remember I'm -- I'm -- I guess I'm
14 trying to move things along because of the case load and
15 because of the issues and the -- and I have to remember
16 that everyone has their day in court. Everyone should
17 have their day in court.

18 The jury often needs to be educated, and so I --
19 I may let a lot more repetitive things go long than
20 testimony and issues. But I think it's for the jury's
21 benefit. I'm sure I have other bad habits, that someone
22 else would be more than happy to point out. And I may
23 agree with them, but those are the ones I --

24 **Q. I appreciate those responses. That's helpful.**
25 **Are there -- and I've asked this question of every**

1 candidate -- just about every candidates. But -- because
2 I hate to leave the opportunity out there and not take it:

3 Are there any legislative changes, particularly
4 as it relates to the court -- but it could be any --
5 anything that -- you know, you just sit back and you're --
6 you know, like, "Why aren't these guys taking care of
7 this?"

8 Other than judicial pay raises. And that -- I
9 can imagine that might be one that's kind of easy. But
10 other than that, are there -- you know, just some -- just
11 things we're just not seeing or don't know about or just
12 letting slide by?

13 A. I would say that there are some issues relating
14 to criminal statutes. For example, I'm in the middle of a
15 criminal trial this week. And the way the statute is
16 written, it's not very clear. It has provisions in it,
17 that if you compare it to other statutes that may have
18 that same language, it's written differently. So there's
19 a question about what elements the State has to prove in
20 order to get a conviction in -- on some of those cases.

21 And I -- I think it's just a matter of not
22 realizing, that when they're -- let me back up. When I
23 worked for the legislative council there was a formula in
24 -- in -- and I as taught that there was a way in which to
25 write the statutes to provide uniform language, so that

1 basically all criminal statutes read similarly.

2 And I think that there's -- that there is an
3 attempt to either fix issues, or to address concerns that
4 are there; that the writing of some of those statutes may
5 have lost some of that quality, so that there's not a
6 uniform standard, so that it's more difficult to be able
7 to interpret them. It's not -- not my job --

8 **Q. I understand.**

9 A. -- to do anything about those, but it does -- it
10 does create issues. And frankly, the issue I have this
11 week is -- is kind of a compelling issue, but then I have
12 to fall back on statutory construction and those rules
13 related to how to construe a criminal statute. And so
14 that's -- that's what I'm doing. I'm not so sure -- I
15 think at some particular point, it may be an issue that
16 somebody will raise down the line. But it may not be this
17 particular case.

18 **Q. Thank you.**

19 SENATOR CAMPSSEN: Anyone else? Mr.
20 Howard.

21 EXAMINATION BY MR. HOWARD:

22 **Q. Good afternoon, Judge.**

23 A. Good afternoon.

24 **Q. Nobody's asked this, so -- and so I'm kind of**
25 **curious to get your take on it: You've been experienced as**

1 a member of the ALJ, and as a -- and as a -- sitting on
2 the circuit court. What about your experiences on the
3 circuit court, and as a member of the ALJ, could you bring
4 to the Court of Appeals, which may assist you in that
5 role? What do you think is -- would be helpful in your
6 experiences?

7 A. Primarily, the opportunity -- with the ALJ, it
8 was primarily the contested cases that I had. So I'm
9 familiar with the body of laws on, certainly, those cases.
10 I think that would -- the fact that I've been at that
11 particular level, as well as on circuit court, where I,
12 you know, have kind of been in the trenches, that I --
13 that I've seen the cases that have come forward.

14 I've seen he kind of evidence that's presented,
15 and, you know, had the -- had the opportunity to address
16 the issues, would be give a little bit more of an
17 understanding of what issues may come up in appeal, how to
18 handle those issues, you know, and -- and then the
19 research and writing portion of it. Does that answer?

20 **Q. Thank you. That does answer. Thank you.**

21 A. You know, and -- and additionally, I've tried to
22 -- to -- at least on circuit court go out and learn --
23 learn additional things as well. For example, a couple of
24 years ago I asked about being able to -- to -- to
25 participate in business court, to give me the opportunity

1 to be able to learn more about the business cases, on
2 issues that come up before business court, because I know
3 that a lot of those issues come up in -- on -- on the
4 Appellate Courts.

5 The only area I would say that I probably don't
6 know much about, and that's family court, because I
7 haven't had a reason to actually practice in that area. I
8 haven't had -- had a reason to -- to participate in any
9 hearings of law in the family court area. So that would
10 require my own desire to -- to be able to learn that area,
11 and be able to apply it in a particular case that may come
12 up before the Appellate Court.

13 **Q. Thank you.**

14 SENATOR CAMPSSEN: Any other questions for
15 Judge Lee?

16 (Hearing none.)

17 EXAMINATION BY SENATOR CAMPSSEN:

18 **Q. Ms. Lee, I have one question.**

19 A. Yes, sir.

20 **Q. Since you are seeking an Appellate Court**
21 **position, this would be relevant in your rulings and**
22 **opinions: What is your opinion as to when making rulings**
23 **of law crosses the line into lawmaking?**

24 A. Basically, when you've -- read something that's
25 not written in the statute. There's a difference between

1 -- as an appellate court, not the Supreme Court -- we're
2 talking about the circuit court and the Appellate Court,
3 I'm bound by the Constitution, I'm bound by -- I'm bound
4 by the legislation as it's written. There are certain
5 principles that govern interpreting and construing the
6 statute; I would be bound by following those. My job
7 would be to apply the facts to that particular
8 circumstance.

9 If there's an issue of law, then I'm not
10 required to give any deference to the lower court, but I
11 still have to follow those issues of construction and
12 being able to apply the statute or the Constitution, as
13 it's written, to those particular facts.

14 And I don't think that I can read into something
15 or create or interpret a statute or the Constitution, with
16 language that's not present and not there. Even -- even
17 with ambiguities, you have to look at the history, the
18 legislative intent, other cases that may have interpreted
19 the statute.

20 So there's still -- there's still a framework
21 and a format to be able and go and to make those
22 applications. But when you -- when you go beyond that, I
23 think that, that steps into the legislative issues, and it
24 oversteps.

25 SENATOR CAMPSSEN: Thank you. Any other

1 questions?

2 (Hearing none.)

3 SENATOR CAMPSSEN: Okay. Judge Lee, thank
4 you for being with us today. That concludes this portion
5 of our screening process. As you know, the record will
6 remain open until the formal release of the report of
7 qualifications, and you may be called back at such time if
8 the need arises.

9 I thank you for offering. And thank you
10 for your service to South Carolina.

11 JUDGE LEE: And thank you-all for the work
12 that you do. And I would like to thank the staff for all
13 the courtesies that they have extended to me, and the
14 assistance that they've given to me in this process as
15 well. And I appreciate the opportunity to be here before
16 you, and to answer any questions that you had.

17 SENATOR CAMPSSEN: Thank you.

18 JUDGE LEE: Thank you.

19 (Candidate excused.)

20 SENATOR CAMPSSEN: Okay. That concludes the
21 morning screening. And I would entertain a motion to go
22 into executive session, now, as we finish this.

23 REPRESENTATIVE RUTHERFORD: So move.

24 SENATOR CAMPSSEN: So moved by
25 Representative Rutherford. Do we have a second?

1 MR. HITCHCOCK: Second.

2 SENATOR CAMPSSEN: Mr. Hitchcock. Any
3 discussion?

4 (Hearing none.)

5 SENATOR CAMPSSEN: If there be no
6 discussion, all in favor indicate by saying "aye."

7 (At this time the members audibly say "aye.")

8 SENATOR CAMPSSEN: Opposed?

9 (Hearing none.)

10 SENATOR CAMPSSEN: The ayes have it. So we
11 are in executive session.

12 (Off the record from 1:06 p.m. to 3:14 p.m.)

13 SENATOR CAMPSSEN: Okay. We can lift the
14 veil and come out of executive session. We took no
15 action. We took no votes. Ms. Brogdon, if you could just
16 review the voting procedure.

17 MS. BROGDON: Just a quick reminder, again
18 for everybody, the chairman will -- I will call the names
19 of qualified candidates in alphabetical order. Each
20 commission member has three votes to cast to find an
21 individual qualified and nominated. Any candidate that
22 receives six or more votes will be considered qualified
23 and nominated at the end of that vote, unless there is a
24 tie. Any candidate that does not get any votes will be
25 removed from consideration on any subsequent ballot that

1 occurs. Does anybody have any questions?

2 SENATOR MALLOY: Mr. Chairman, I would
3 respectfully move that we call each candidate, and vote
4 first on their qualifications as to whether they are
5 qualified. And we can do that by the members here. And
6 then after that, then make a determination as to whether
7 they're nominated.

8 SENATOR CAMPSSEN: Do I have a motion? We
9 have a second.

10 MR. SAFRAN: I have a question prior to the
11 motion.

12 SENATOR CAMPSSEN: Mr. Safran.

13 MR. SAFRAN: In the event you do not make
14 an affirmative vote one way or another on qualification,
15 if you were to abstain, does that prohibit you from voting
16 ultimately on whether somebody gets passed down?

17 SENATOR CAMPSSEN: No. I don't believe --
18 I don't believe there's any precedent that would dictate
19 that or rules of order that would dictate that.

20 MR. SAFRAN: Thank you.

21 SENATOR CAMPSSEN: We have a second. We
22 have a second of Senator Malloy's motion. Any discussion?

23 (Hearing none.)

24 SENATOR CAMPSSEN: No further discussion.
25 All those in favor indicate by saying "aye."

1 (At this time the members audibly say "aye.")

2 SENATOR CAMPSEN: Opposed?

3 (Hearing none.)

4 SENATOR CAMPSEN: The ayes have it. So we
5 will -- we will be taking votes on qualification. I'm
6 ready -- yeah, Ms. Brogdon, you --

7 MS. BROGDON: Blake Alexander Hewitt. If
8 you want to find him qualified, please raise your hand.

9 REPRESENTATIVE SMITH: Mr. Chairman, can
10 the record reflect that I have a proxy of Representative
11 Bannister and Representative Rutherford, and both of them
12 are voting for him to be qualified.

13 (Commission members cast their vote.)

14 MS. BROGDON: That's nine votes for
15 qualified.

16 The Honorable David Garrison "Gary" Hill. Let
17 me clarify that's nine votes for -- back to Mr. Hewitt,
18 nine votes for qualified, and one vote for unqualified.

19 Now as to the Honorable David Garrison
20 Hill, please raise your hand if you want to find him
21 qualified.

22 REPRESENTATIVE SMITH: Mr. Chairman, the
23 same -- let the record reflect the same proxies for
24 Representative Bannister and Representative Rutherford.

25 (Commission members cast their vote.)

1 MS. BROGDON: That's ten votes to find
2 Judge Hill qualified.

3 Jon Rene Josey. Please raise you hand if
4 you want to find him qualified.

5 REPRESENTATIVE SMITH: The same -- you
6 know, the same for the record, Representative Rutherford
7 and Bannister.

8 (Commission members cast their vote.)

9 MS. BROGDON: That's six --

10 MR. SAFRAN: And I want to be marked as
11 abstaining -- abstaining on that vote.

12 MS. BROGDON: That's six votes finding Mr.
13 Josey qualified, three votes finding Mr. Josey
14 unqualified, and one abstention.

15 The Honorable Alison Renee Lee. Will you
16 please raise your hand if you want to vote her qualified.

17 REPRESENTATIVE SMITH: Mr. Chairman, the
18 same thing for the proxies of Rutherford, Bannister, they
19 vote "aye."

20 (Commission members cast their vote.)

21 MS. BROGDON: That's ten votes to find
22 Judge Lee qualified.

23 SENATOR CAMPSSEN: If you could recap what
24 we just did.

25 MS. BROGDON: So Blake Alexander Hewitt had

1 nine votes as qualified, and one vote as unqualified.

2 The Honorable David Garrison Hill had ten
3 votes for qualified.

4 Jon Rene Josey had six votes for qualified,
5 three votes for unqualified, and one abstention.

6 The Honorable Alison Renee Lee had ten
7 votes for qualified. Mr. Chairman, are you ready for the
8 --

9 SENATOR CAMPSER: Ready for the vote.

10 MS. BROGDON: -- qualified and nominated
11 vote? I'll read the names in alphabetical order. And
12 then, please, by a show of hands, show whether you want to
13 find the person both qualified and nominated.

14 Blake Alexander Hewitt. Please raise your
15 hand if you want to find him qualified and nominated.

16 (Commission members cast their vote.)

17 MS. BROGDON: That's six votes for Mr.
18 Hewitt to be found qualified and nominated.

19 The Honorable David Garrison "Gary" Hill.
20 Please raise you hand if you want to find him nominated.

21 REPRESENTATIVE MR. SMITH: Rutherford and
22 Bannister vote "aye."

23 (Commission members cast their vote.)

24 MS. BROGDON: That's eight votes to find
25 Judge Hill both qualified and nominated.

1 Jon Rene Josey. Please raise your hands if
2 you want to find him nominated.

3 (Commission members cast their vote.)

4 MS. BROGDON: That's no votes for Mr. Josey
5 as to nomination.

6 The Honorable Alison Renee Lee. Please
7 raise your hands if you want to find her nominated.

8 REPRESENTATIVE SMITH: Mr. Chairman, the
9 same for Representative Rutherford and Bannister.

10 (Commission members cast their vote.)

11 MS. BROGDON: That's ten votes for Judge
12 Lee to be found both qualified and nominated.

13 SENATOR CAMPSSEN: Yes, please recount those
14 votes.

15 MS. BROGDON: Blake Alexander Hewitt is now
16 nominated with six votes. The Honorable David Garrison
17 Hill is now nominated with eight votes. The Honorable
18 Alison Renee Lee is now nominated with ten votes.

19 SENATOR CAMPSSEN: Thank you. There was
20 only an abstention on qualified vote.

21 MS. BROGDON: There were no abstentions.

22 SENATOR CAMPSSEN: There was only an
23 abstention on qualified. Yes, we also need to vote on the
24 -- on Judge Short.

25 SENATOR MALLOY: Mr. Chairman, I would move

1 that we find both Judge Short and Judge Williams qualified
2 and nominated.

3 SENATOR CAMPSSEN: Do we have a second for
4 that motion --

5 SENATOR MALLOY: By acclamation.

6 SENATOR CAMPSSEN: We have a second to do
7 that by acclamation. Any discussion?

8 (Hearing none.)

9 SENATOR CAMPSSEN: Being no discussion,
10 we'll move immediately to a vote. All those in favor
11 indicate by saying "aye."

12 (At this time the members audibly say "aye.")

13 SENATOR CAMPSSEN: All those opposed?

14 (Hearing none.)

15 SENATOR CAMPSSEN: The ayes have it.

16 SENATOR MALLOY: Mr. Chairman.

17 SENATOR CAMPSSEN: Senator Malloy.

18 SENATOR MALLOY: I would respectfully
19 request a five-minute recess. I would like for the -- at
20 least one of the House of Representatives to end up being
21 back for this review.

22 SENATOR CAMPSSEN: Okay. We have a motion
23 for a five-minute recess.

24 MR. HITCHCOCK: Second.

25 SENATOR CAMPSSEN: A second. All in favor,

1 say "aye."

2 (At this time the members audibly say "aye.")

3 SENATOR CAMPSSEN: The ayes have it. We are
4 in recess.

5 (Off the record from 3:24 p.m. to 4:00 p.m.)

6 SENATOR CAMPSSEN: Ms. Knie, welcome.

7 MS. KNIE: Thank you, sir.

8 SENATOR CAMPSSEN: Please raise your right
9 hand.

10 WHEREUPON:

11 GRACE GILCHRIST KNIE, being duly sworn and
12 cautioned to speak the truth, the whole truth and nothing
13 but the truth, testifies as follows:

14 SENATOR CAMPSSEN: Have you had an
15 opportunity to review your personal data questionnaire and
16 sworn statement?

17 MS. KNIE: Yes, sir.

18 SENATOR CAMPSSEN: Are they correct?

19 MS. KNIE: Yes, sir.

20 SENATOR CAMPSSEN: Does anything need to be
21 changed?

22 MS. KNIE: No, sir.

23 SENATOR CAMPSSEN: Do you object to our
24 making these documents, and any amendments, if applicable,
25 a part of the record of your sworn testimony?

1 MS. KNIE: No, sir.

2 SENATOR CAMPSEN: It will be done at this
3 point in the -- if you could hand your questionnaire, it
4 will be done at this point in the transcript.

5 (EXHIBIT NO. 1 - JUDICIAL MERIT SELECTION
6 COMMISSION PERSONAL DATA QUESTIONNAIRE OF GRACE
7 GILCHRIST KNIE)

8 (EXHIBIT NO. 2 - JUDICIAL MERIT SELECTION
9 COMMISSION PERSONAL DATA QUESTIONNAIRE AMENDMENT
10 OF GRACE GILCHRIST KNIE)

11 (EXHIBIT NO. 3 - JUDICIAL MERIT SELECTION
12 COMMISSION SWORN STATEMENT OF GRACE GILCHRIST
13 KNIE)

14 SENATOR CAMPSEN: Ms. Knie, the Judicial
15 Merit Screen Selection Commission has thoroughly
16 investigated your qualifications for the bench. Our
17 inquiry has focused on nine evaluative criteria, and has
18 included a ballot box survey, a thorough study of your
19 application materials, verification of your compliance
20 with state ethics laws, a search of newspaper articles in
21 which your name appears, a study of previous screenings, a
22 check for economic conflicts of interest. We have
23 received no affidavits filed in opposition to your
24 election, and no witnesses are present to testify.

25 Do you have a brief opening statement you

1 would like to make at this time?

2 MS. KNIE: Thank you, Mr. Chairman. Quite
3 frankly, based upon the application materials, the volume
4 of those materials and the detail involved in those
5 materials, I believe that you-all probably know more about
6 me, or as much, than my spouse who is present.

7 And so in lieu of an opening, per se, that
8 would be merely duplicative, I would like to thank all of
9 you for your service on this commission. You-all wear a
10 lot of hats. And I know that this is time consuming and
11 very demanding on you.

12 SENATOR CAMPSSEN: Thank you.

13 MS. KNIE: And also further, I would like
14 to express appreciation to Mrs. Brogdon, Mrs. Dean, and
15 the members of their staff on the Commission. Sincerely,
16 they, to a person, have been kind and receptive to
17 questions, and informative. And I thank them for their
18 help in this process. Thank you, sir.

19 SENATOR CAMPSSEN: Thank you.

20 MS. KNIE: I'm happy to answer your
21 questions.

22 SENATOR CAMPSSEN: All right. And now --

23 MS. KNIE: Or any of your questions.

24 SENATOR CAMPSSEN: Staff will ask you some
25 questions.

1 MS. DEAN: Thank you, Mr. Chairman. I note
2 for the record that, based on the testimony contained in
3 the candidate's PDQ, which has been included in the record
4 with the candidate's consent, Mrs. Knie meets the
5 constitutional and/or statutory requirements for this
6 position regarding age, residence, and years of practice.

7 EXAMINATION BY MS. DEAN:

8 **Q. Ms. Knie, why do you now want to serve on the**
9 **circuit court?**

10 A. Thank you, Mrs. Dean. It is time for me to do
11 this. And in saying that, it is time in my life -- in my
12 professional and my personal life. I am 52 years old.
13 I've been practicing now for twenty-seven years. And I
14 have been truly blessed in my professional practice, and
15 in my personal life; and feel that now that this
16 opportunity has presented itself, it's time for me to give
17 back and to commit myself to public service.

18 I have many class members who have far exceeded
19 me in their public service to our state. Some are members
20 of Congress. Some are senators. Some have been the
21 president of our state Bar association. And so I have a
22 very supportive spouse who joined me in this decision.

23 I have no children that I'm responsible for, and
24 so, quite frankly, it's time.

25 **Q. Thank you, Ms. Knie. How do you feel your legal**

1 **and professional experience thus far will assist you in**
2 **being an effective circuit court judge?**

3 A. In my professional life I have held a vast and
4 wide array of types of legal actions. And I started my
5 career as a clerk to a circuit judge, and that was twenty-
6 seven years ago. And in that job, I accompanied that
7 judge daily in court. I was his conduit of information to
8 lawyers and anyone attempting to converse with him. I
9 traveled with him regularly. I sat on the bench next to
10 him, and then began a private practice.

11 And I've been a sole practitioner for twenty-
12 four years. And in addition to being a sole practitioner,
13 I have also served as city prosecutor for the City of
14 Spartanburg -- an appointed position. I held that
15 position for fifteen years. And in that position I was in
16 charge of all of the jury trials for the City of
17 Spartanburg -- and those are criminal trials -- as well as
18 appeals from city court to circuit court. And in my
19 private practice I was allowed to defend criminal cases
20 that did not conflict with my city position.

21 I have practiced extensively in family court and
22 circuit court. In criminal court I have handled post-
23 conviction relief actions. I have handled appeals. I
24 have done virtually everything that you can do in circuit
25 court except be a judge or a court reporter.

1 **Q. Thank you, Mrs. Knie. What do you perceive as**
2 **the most important issues facing state courts today?**

3 A. I think that a very, very important issue,
4 whether perceived or real, is the concept that there is a
5 backlog of cases, and that it is very difficult to have
6 your day in court. And I -- did you want me to state a
7 remedy for that, or what I would do to help solve the
8 problem?

9 **Q. However you feel comfortable answering.**

10 A. And so I think that -- that, and a perception
11 that possibly lawyers are very self-centered and that our
12 judicial system does not serve the public. And in
13 Spartanburg, particularly, we made -- when I was the
14 president of our Bar association, I really intended to
15 make students, young people, and members of the public,
16 aware of our Bar association, and invited them to our Bar
17 meetings.

18 I was our chairperson of our Cinderella Project,
19 which is a prom dress project, and almost singlehandedly
20 did that for seven years. And we not only serviced
21 Spartanburg County, but Cherokee County, Union, Laurens,
22 the smaller counties adjacent -- because they didn't have
23 that program there -- and tried to get a lot of very good
24 publicity about our Bar association, trying to help the
25 community.

1 And so I think an issue would be the perception
2 of lawyers, and also that there is a perception of a
3 backlog of cases, and that it is very difficult to get a
4 fair shake in the courtroom.

5 **Q. Thank you, Mrs. Knie. Along the lines of the**
6 **backlog that you were just talking about, if you were the**
7 **person responsible for deciding what cases would be tried**
8 **in what order, how would you split the courts time between**
9 **the criminal calendar and the civil calendar?**

10 A. Well, those are two very different things. And
11 in talking even about backlog of cases, there are two --
12 the reasons for the backlog, I think, are issues truly
13 separate and distinct.

14 I would -- you have to look at each case
15 individually, and decide. But in criminal cases, I think
16 one issue would be, with regard to whether or not a
17 defendant is incarcerated and waiting for trial, and --
18 and the length of the backlog, the -- any negative impact
19 on the victims.

20 And as well as in civil cases, I think that
21 along the same lines you must look at parties that are not
22 receiving their justice, and the reasons for the delays,
23 and who -- who would benefit from moving those cases
24 ahead.

25 If there were children involved, persons,

1 victims involved, that would always be a very pressing and
2 important issue.

3 Q. Thank you, Mrs. Knie. If you became aware of
4 unethical conduct on the part of trial advocate in a case
5 in which you were presiding, how would you handle it? And
6 do you believe judges should be required to report
7 attorney misconduct?

8 A. Absolutely. And I think that it's very clear in
9 the judicial canons, that judges are required to report
10 any misconduct that they observe, either to -- either by
11 fellow judges or by counsel, and that they're to due so to
12 the proper agency or authority.

13 Q. Thank you, Mrs. Knie. Moving now to the ballot
14 box questions. The Commission received 219 ballot box
15 surveys regarding you, with 32 additional comments. The
16 ballot box survey, for example, contained the following
17 positive comments:

18 "Based on her extensive knowledge, Grace would
19 be an outstanding circuit court judge." Another comment
20 was, "Excellent attorney." Another comment was, "Smart,
21 kind, and very professional attorney."

22 Five of the written comments expressed concerns.
23 The comments indicated concern regarding your level of
24 experience. What response would you have for this
25 concern?

1 A. That if those comments were made -- and I'm
2 assuming it was anonymous -- that possibly the -- the
3 author of the comments did not know me well, and had never
4 practiced against me. And by way of explanation, I have
5 never advertised for business. And I'm very proud of
6 that. I didn't even have a website until two or three
7 years ago, because it has become almost, you know,
8 impossible to operate now without one.

9 But I have built a practice on client relations
10 and representing folks for twenty-seven years, that no one
11 else really wanted to represent. I took those people in,
12 and then I started representing their family members,
13 their friends. It's all word of mouth.

14 And there may be some perception that I am not
15 as experienced in certain areas of courtroom experience.
16 But I would, number one, deny that and take objection with
17 that. I have twenty-seven years of experience. I have
18 practiced in the criminal court, through the City of
19 Spartanburg, and have been -- I have tried hundreds of
20 cases in magistrate and municipal court, in front of a
21 jury, sometime trying three and four a day during a term.
22 And then also during the same week, trying twelve to
23 fifteen family court hearings, and possibly having to
24 appear in criminal court at the county, at the same time -
25 - you know, during the same five-day period.

1 I don't know how anyone could be more
2 experienced than I am. And quite frankly, there were
3 weeks that I spent more time at the courthouse, and the
4 joke was the bailiffs told me I should be paying rent to
5 the county rather than to my landlord, because I have
6 litigated so much, and been in court so much of the time.

7 **Q. Thank you, Mrs. Knie. There was one other**
8 **ballot box comment expressing concern that you were**
9 **fundraising for members of the General Assembly while you**
10 **were seeking a judicial seat. What response would you**
11 **have to that?**

12 A. Thank you. I deny that. That -- that is not
13 true, and again would point out that -- as I understand it
14 from our prior conversation, that -- that is anonymous. I
15 was not a judicial candidate at the time that I hosted a -
16 - not a fundraiser, but a meet-and-greet for a
17 representative in my judicial circuit.

18 **Q. Thank you, Ms. Knie --**

19 A. Oh, and if I may say it was not a fundraiser.
20 It was a meet-and-greet. There was no prerequisite for
21 attendance. It was with my neighbors.

22 **Q. Thank you. Ms. Knie, you have indicated in your**
23 **PDQ, a lawsuit was filed against you in 2001, in Federal**
24 **District Court, by a Ms. Ringler, I believe. Can you**
25 **please explain the nature and disposition of that case?**

1 A. Certainly. I was never served with these
2 pleadings. And quite frankly, in preparation for
3 completing this application, searched, myself, to see if
4 my name would pop up as to any litigation being named as a
5 party in litigation. And this -- this case showed up.
6 And I did not want to not show it on the application. But
7 apparently the case was dismissed by the judge before it
8 was actually served on the parties.

9 **Q. Great. Thank you, Mrs. Knie. You also**
10 **indicated in your PDQ, a lawsuit filed against you in**
11 **1999, by -- and I'm going to butcher this name. I**
12 **apologize. Mr. Cicele. Maybe C-i --**

13 A. Shah-SHELL-ee [ph].

14 **Q. Can you -- thank you. Can you please explain**
15 **the nature and disposition of this lawsuit?**

16 A. Yes. The plaintiff in that action sued not only
17 me but his exwife, his daughter, counsel for his former
18 wife. I think he might have also brought suit against
19 counsel for his daughter, and appellate counsel, all
20 stemming from a domestic relations case and divorce.

21 His civil action was dismissed prior to the
22 12(b)(6) motions filed on our defendant -- on our lawyer's
23 behalf. He failed -- he contacted the judge, or the
24 clerk's office, and stated he did not wish to go forward,
25 and did not wish to appear at the motion hearing. And

1 case was dismissed with prejudice.

2 Q. Thank you, Ms. Knie. Please just bear with me
3 here. You also indicated on your PDQ, a lawsuit by SC
4 State Housing Finance, where you were named as an inferior
5 lienholder, where the other party's name was Garner.
6 Similarly, you listed two other cases titled First
7 Citizens v. Garner, and both of these were also inferior
8 lienholder cases. Can you please explain the nature of
9 these cases and the dispositions?

10 A. Yes, ma'am. Thank you. During this period of
11 time, I received phone calls from a lot of attorneys that
12 handled mortgage foreclosure cases. And as an attorney
13 practicing in family court in the -- any decree issued in
14 family court in which attorney's fees were owed to me,
15 these were showing up on a search conducted by counsel for
16 the mortgage holder. And they named me as a defendant in
17 the lawsuits, but they -- it was only because I was an
18 inferior lienholder to the mortgage.

19 Q. Thank you. And you also listed Regions Bank v.
20 Christopher Green, and you indicated the same inferior
21 lien --

22 A. Yes.

23 Q. -- situation, probably?

24 A. Yes, ma'am.

25 Q. Thank you. Lastly, you listed Knie v. Knie, PA.

1 You indicated that this was a workers' comp claim that you
2 made?

3 Q. Okay.

4 A. Yes, ma'am. Thank you, ma'am. I listed this
5 out of an abundance of caution, because in the
6 questionnaire we were -- it was required that we list
7 cases in which we were named defendants. And since I am
8 my PA, I listed that. I was injured by a client, at a
9 Social Security hearing, who was attempting to flee from
10 his probation officers, who had shown to arrest him for a
11 probation violation. And I ultimately brought a Workers'
12 Compensation claim due to injuries of a torn meniscus and
13 TMJ. That matter has been resolved by agreement against
14 my carrier.

15 Q. Thank you.

16 MS. DEAN: Mr. Chairman, I would like to
17 request that we now go into executive session.

18 SENATOR CAMPSSEN: Mr. Hitchcock moves to go
19 into executive session. We have a second from Mr.
20 Rutherford. Any discussion?

21 (Hearing none.)

22 SENATOR CAMPSSEN: No discussion. We'll
23 move immediately to a vote. All in favor indicate by
24 saying "aye."

25 (At this time the members audibly say "aye.")

1 SENATOR CAMPSSEN: Oppose?

2 (Hearing none.)

3 SENATOR CAMPSSEN: That ayes have it. We
4 are now in executive session.

5 (Off the record from 4:19 p.m. to 4:24 p.m.)

6 SENATOR CAMPSSEN: We're back on the record.
7 No action. No votes.

8 MS. DEAN: Thank you.

9 REEXAMINATION BY MS. DEAN:

10 **Q. Ms. Knie, I just have some housekeeping issues**
11 **at this time. Since submitted your letter of intent, have**
12 **you sought or received the pledge of any legislator,**
13 **either prior to this date or pending the outcome of your**
14 **screening?**

15 A. No, ma'am.

16 **Q. Have you asked any third parties to contact**
17 **members of the General Assembly on your behalf, or are you**
18 **aware of anyone attempting to intervene in this process on**
19 **your behalf?**

20 A. No, ma'am.

21 **Q. Since submitting your letter of intent to run**
22 **for this seat, have you contacted any members of this**
23 **Commission about your candidacy?**

24 A. No, ma'am.

25 **Q. Do you understand that you're prohibited from**

1 **seeking a pledge or commitment, directly or indirectly,**
2 **until 48 hours after the formal release of the**
3 **Commission's report, and are you aware of the penalties**
4 **for violating the pledging rules?**

5 A. Yes, ma'am.

6 MS. DEAN: I would note that the Upstate
7 Citizens Committee reported that Ms. Knie is qualified in
8 the three criteria of constitutional qualifications,
9 physical health and mental stability. The Committee found
10 Mrs. Knie to be well qualified in the categories of
11 ethical fitness, professional, academic ability,
12 character, reputation, experience, and judicial
13 temperament. I would just note for the record that any
14 concerns raised during this investigation regarding the
15 candidate were incorporated into today's questioning.

16 Mr. Chairman, I have no further questions.

17 SENATOR CAMPSSEN: Thank you. Any members
18 have any questions?

19 SENATOR MALLOY: Mr. Chairman.

20 SENATOR CAMPSSEN: Senator Malloy.

21 SENATOR MALLOY: Thank you, Mr. Chairman.

22 First, I want to say that -- that Ms.
23 Gilchrist and I were in law school together, and I've done
24 cases in the past with her husband. And he has supported
25 my campaign. I just wanted to put that on the record.

1 And then I'll just ask her just a couple of questions.
2 She talked about her experience.

3 EXAMINATION BY SENATOR MALLOY:

4 Q. So you -- you tried hundreds of cases.

5 A. Yes, sir. Yes. Yes.

6 Q. So you were -- you were a prosecutor for fifteen
7 years?

8 A. Yes. It was a part-time position in addition to
9 my private practice. Routinely, we would have terms of
10 court if not -- well, if not every other week, monthly,
11 and I was the sole prosecutor for the jury trials for the
12 City of Spartanburg.

13 Q. And you would also have had a civil practice?

14 A. Yes.

15 Q. How long have you been in practice by yourself?

16 A. By myself for almost twenty-five years.

17 Yesterday, was my 27th anniversary for being sworn into
18 the Bar.

19 Q. And you had a family court practice as well.

20 A. Yes.

21 Q. And what else did you -- did you do workers'
22 comp?

23 A. Yes. I still do plaintiffs -- claimants
24 personal -- personal injury, workers' comp, sexual
25 harassment, and some medical malpractice work. And I also

1 have handled some -- let's see, I handled the appeals from
2 municipal court to the circuit court as well -- I was in
3 charge of all that in addition to handling their jury
4 trials, and then I did some criminal defense work that
5 didn't conflict with the city court work.

6 **Q. And I've asked some of the other candidates**
7 **about citizens having access to the court system. In your**
8 **practice did you do pro bono work as well?**

9 A. Oh, yes. I have done a tremendous amount of pro
10 bono work. And sometimes it's a point of conflict at my
11 household as to the amount of pro bono work that -- that I
12 handle. And I get paid a lot in apples, tomatoes,
13 butterbeans, pies and cakes at my office. And -- and that
14 is one thing that I will miss is the relationship with my
15 clients.

16 **Q. I don't have any other questions.**

17 A. Thank you.

18 SENATOR CAMPSSEN: Thank you. Anyone else?
19 Representative Smith.

20 REPRESENTATIVE SMITH: Thank you, Mr.
21 Chairman.

22 EXAMINATION BY REPRESENTATIVE SMITH:

23 **Q. Ms. Knie, I apologize. I was at freshman**
24 **orientation, seeing some of your new legislators over**
25 **there from Spartanburg County. But let me -- let me talk**

1 to you -- you may have answered some of this. But, you
2 know, at circuit court -- we've been screening Appellate
3 Court judges, and now we're screening circuit court
4 judges. And to me, the temperament, the demeanor of a
5 circuit court judge, is probably one of the most -- one of
6 the biggest attributes that need to be there.

7 And you're dealing with the public, you're on
8 the front line as a judge, dealing with the public. You
9 deal with the litigants. You're dealing with the lawyers,
10 and how people treat and -- and -- and treat the public
11 and the lawyers, is a reflection of the judicial system,
12 in my opinion, in and of itself.

13 So, you know, I would like for you to tell me
14 kind of what your -- what you believe -- the temperament
15 you would -- you would have, if you were elected to the
16 circuit court. And also what you would -- what -- you
17 know, what you observe, and who you would model yourself
18 after as a circuit court judge.

19 A. Thank you. I have -- I have had a lot of time -
20 - spent a lot of time in courtrooms, and spent a lot of
21 time with clients and victims and defendants, pro se
22 litigants, children, throughout -- throughout my twenty-
23 seven years. And -- and I can tell you that I think that
24 the appropriate demeanor -- because I've seen a lot of
25 inappropriate demeanor in the courtrooms. You know, over

1 twenty-seven years you witness a lot. I think that a
2 judge should be respectful to everyone that is in the
3 courtroom, unless given a reason to be more stern. I'm
4 not saying anger. But, you know, should begin being very
5 respectful, very courteous, very patient, and should be
6 firm and decisive.

7 On the patience part of this -- not -- not that
8 patience means that there's a sign of weakness. But in my
9 twenty-seven years of practice, I learned very quickly
10 that a lot of times you can get a long way with people, if
11 you just listen to them and let them tell their story.
12 They want their day in court. Whether it is someone who
13 has been hurt on their job, that feels like the employer
14 who has fired them now, and let them go, isn't being fair
15 to them; they want to tell a commissioner that. Or in a
16 personal injury action, that want to say how they have
17 lost days from work over their back injury.

18 In family court they want to talk about how
19 they've been wronged, you know, by the loss of a spouse or
20 the income or the -- what their life would be without
21 their children.

22 And so whether it would be they get to tell
23 their story at a guilty plea or in a trial testimony or in
24 a deposition or in mediation, I think that it is extremely
25 important to be receptive and listen to people that are in

1 your courtroom, and let them feels as though they've had
2 their day in court.

3 As far as a mentor, or someone that -- that I
4 see to be like, I have certainly been around judges with
5 great temperament. The judge that I am seeking to replace
6 has a wonderful judicial temperament. And the judge that
7 I clerked for, Jim Steven, had a wonderful judicial
8 temperament.

9 And again, I think that it is also very
10 important, having appeared in front of numerous judges,
11 that a judge strive not to embarrass counsel in a
12 courtroom, not to do so in front of the clients. And
13 again to be polite and respectful if -- if there's a need
14 for sidebar or conference in chambers to -- to handle it
15 that way. Thank you.

16 **Q. Thank you.**

17 SENATOR MALLOY: Anyone else have
18 questions? Mr. Rutherford.

19 EXAMINATION BY REPRESENTATIVE RUTHERFORD:

20 **Q. Ms. Knie, can you tell me -- and this is --**
21 **again, people may disagree on this. But my experience is**
22 **that a lot of judges, once they get elected, believe that**
23 **they are merely an extension of the solicitor's office,**
24 **and believe that lawyers appearing in front of them,**
25 **appear at the pleasure -- in general sessions court, at**

1 the pleasure of the solicitor, and whenever the solicitor
2 says "jump," they should jump. And when lawyers request,
3 for example, orders of protection, judges are saying that
4 you have to get permission from the solicitor before you
5 get it.

6 And so it is becoming more and more evident in a
7 lot of the counties where I practice, that judges believe
8 that they are accountable to the solicitors, and not at
9 all accountable to the defense bar, and seemingly not at
10 all accountable to the statements that they come in here
11 and make as to how they're going to be when they get on
12 the bench.

13 Can you address how you believe circuit court
14 could -- should go, and your role as a judge in finding
15 the proper balance between being in general sessions court
16 and dealing with the solicitors and dealing with lawyers
17 that are also appearing in front of you?

18 A. Yes. I think I understand your question. I
19 believe that -- and this is more complex, I think -- or
20 the way that I'm taking it may be more complex, because
21 there have been some recent case law -- you know, cases
22 coming down on the issues of whether a solicitor should --
23 should control a docket, whether the court should control
24 the docket.

25 And I think that there is a proper role for a

1 solicitor in each judicial circuit, and a proper role for
2 a public defender and for the judge. And I don't think
3 that the solicitor should control, necessarily, the cases
4 that come before the court, entirely. But I do think that
5 the solicitor and -- and the public defender do have a lot
6 of insight as to the age of cases, which cases are ready
7 for trial, and can assist in being more efficient in
8 moving all of that along.

9 I'm aware of the Langford Case on the docketing
10 issues, and am aware that there has been a push to take
11 the cases out of control of the solicitors and put them in
12 control of the circuit judges. And I think that there is
13 -- there should be a -- I guess, a mix there, a hybrid if
14 you will.

15 Because, you know, in different judicial
16 circuits -- like, if you look at the 13th Circuit,
17 Greenville/Pickens, versus the 14th Circuit which would
18 be, you know, Hampton, Allendale, Beaufort, those are very
19 diverse areas. And those dockets and the way that those
20 courts are handled, I think, are very, very diverse, and
21 should be handled differently.

22 I believe that there should be communication and
23 accountability between the solicitor's office, the judge,
24 and the public defender and the judge, to keep things
25 moving, so that you don't believe that somebody is pulling

1 the cart, somebody's sitting on it and somebody then is
2 trying to slow it down, if you will. I think that
3 everybody needs to work together on those issues, and work
4 very hard and communicate, but not let one party control
5 completely. Did I answer you?

6 **Q. You did.**

7 **A. Okay. Thank you.**

8 SENATOR MALLOY: Any other questions from
9 members of the committee?

10 (Hearing none.)

11 SENATOR MALLOY: We're hearing none.

12 Ms. Knie, thank you so much. That
13 concludes this portion of our screening process. As you
14 know, the record will remain open until the formal release
15 of the report of qualification. And you may be called
16 back at such time, if the need arises.

17 Thank you for offering. And thank you for
18 your service here to South Carolina.

19 MS. KNIE: Thank you. Thank you-all.

20 (Candidate excused.)

21 SENATOR CAMPSER: Please raise your right
22 hand.

23 WHEREUPON:

24 THE HONORABLE JAMES DONALD WILLINGHAM, II,
25 being duly sworn and cautioned to speak the truth, the

1 whole truth and nothing but the truth, testifies as
2 follows:

3 SENATOR CAMPSSEN: Have you had an
4 opportunity to review your personal data questionnaire and
5 sworn statement?

6 JUDGE WILLINGHAM: Yes, sir, I have.

7 SENATOR CAMPSSEN: Are they correct?

8 JUDGE WILLINGHAM: Yes, sir, they are.

9 SENATOR CAMPSSEN: Does anything need to be
10 changed?

11 JUDGE WILLINGHAM: No.

12 SENATOR CAMPSSEN: Do you object to our
13 making these documents, and any amendments, if applicable,
14 a part of the record of your sworn testimony?

15 JUDGE WILLINGHAM: No, sir, I do not.

16 SENATOR CAMPSSEN: It will be done at this
17 point during the transcript.

18 (EXHIBIT NO. 1 - JUDICIAL MERIT SELECTION
19 COMMISSION PERSONAL DATA QUESTIONNAIRE OF THE
20 HONORABLE JAMES DONALD WILLINGHAM, II)

21 (EXHIBIT NO. 2 - JUDICIAL MERIT SELECTION
22 COMMISSION SWORN STATEMENT OF THE HONORABLE
23 JAMES DONALD WILLINGHAM, II)

24 SENATOR CAMPSSEN: The Judicial Merit
25 Selection Commission has thoroughly investigated your

1 qualifications for the bench. Our inquiry has focused on
2 nine evaluative criteria, and has included a ballot box
3 survey, a thorough study of your application materials,
4 verification of your compliance with state ethics laws, a
5 search of newspaper articles in which your name appears, a
6 study of previous screenings, a check for economic
7 conflicts of interest. We have received no affidavits
8 filed in opposition to your election, and no witnesses are
9 present to testify.

10 Do you have a brief opening statement you
11 would like to make at this time?

12 JUDGE WILLINGHAM: Mr. Chairman, I would
13 just like to say that I appreciate the opportunity to be
14 here today. And I appreciate your service on this
15 Commission. I know it can be a thankless job, so I want
16 to go ahead and thank you in advance, at the beginning of
17 it. I want to commend the staff; they have been nothing
18 but absolutely wonderful since the beginning of this
19 process. And I look forward to answering any questions
20 that you may have.

21 SENATOR CAMPSER: Thank you. Staff will
22 ask you some questions at this point.

23 MS. BROGDON: Hi, Judge, Willingham. How
24 are you?

25 JUDGE WILLINGHAM: I'm well. Thank you.

1 MS. BROGDON: I note for the record that
2 based on the testimony contained in the candidate's PDQ,
3 which has been included in the record with his consent,
4 Judge Willingham meets the constitutional and/or statutory
5 requirements for this position regarding age, residence,
6 and years of practice.

7 EXAMINATION BY MS. BROGDON:

8 **Q. Judge Willingham, why do you now want to serve**
9 **as a circuit court judge?**

10 A. A lot of people have asked me that. It all
11 comes back to, I think, the one central reason is that I
12 want to try and help people. I think everybody has a
13 purpose. And I think my purpose is to try and help
14 people. And I've tried to do that through the justice
15 system.

16 If you look at my packet, my entire legal career
17 has been devoted to public service, from my time in the
18 solicitor's office to my time in the magistrate's court.
19 I would like to continue to help people. I would just
20 like to do it at the circuit court level.

21 **Q. Thank you, Judge. Judge Willingham, how do you**
22 **feel your legal and professional experience thus far will**
23 **assist you to be an effective circuit court judge?**

24 A. Well, I had the opportunity to serve as a deputy
25 solicitor in Spartanburg and in Cherokee County for

1 thirteen years. And that position I was able to try cases
2 ranging from shoplifting cases up to capital murder cases.

3 For the past nine years, I've had the
4 opportunity to serve in the civil division of the
5 magistrate's court, and I'm hoping that the combination of
6 the two, the criminal side and the civil side, that, that
7 experience would make me an effective circuit court judge.

8 **Q. Thank you. Judge Willingham, what do you**
9 **perceive as the most important issues facing state courts**
10 **today?**

11 A. I think that perception is important. I think
12 you have to instill trust in the community. I think the
13 judiciary is critical side of that. I think people have
14 to have confidence in their court system, they have to
15 know that when they walk through the door they're going to
16 have an opportunity to be heard, and that their case will
17 be heard fairly, and that their case will be judged
18 impartially, and a fair ruling based upon the law will be
19 delivered to them. I think that is important to uphold
20 the integrity of the government, and especially the
21 judicial branch.

22 **Q. Thank you, Judge. Judge Willingham, if you were**
23 **the person responsible for deciding what cases would be**
24 **tried in what order, how would you split the court's time**
25 **between the criminal calendar and the civil calendar?**

1 A. I think criminal cases would obviously have to
2 take priority, especially if they're incarcerated. I
3 think those are the cases that you start infringing on
4 people's right, if you delay their opportunity to have
5 justice. So those would obviously take priority. The
6 incarcerated case would take the higher priority.

7 And then I think that you have to -- what we
8 tried to do when I was in solicitor's office, you try to
9 get cases as -- resolved as efficiently as possible. In
10 the criminal side we would try to resolve cases within a
11 years time. Because once you get past a year, peoples'
12 memory started fading, and people lose interest. People
13 start moving. People start dying.

14 On the civil side, I think that you have to
15 prioritize those as well. You can't just lay those cases
16 forever. But again, people are entitled to justice on the
17 civil side. But I do still believe that criminal cases
18 would have the main focus.

19 **Q. Thank you. Judge Willingham, if you became**
20 **aware of unethical conduct on part of the trial advocate**
21 **in a case in which you were presiding, how would you**
22 **handle it? And do you believe judges should be required**
23 **to report attorney misconduct?**

24 A. It's a tough situation to be put in. But I
25 think the rules require it. And if the rules require it,

1 and it comes to your attention, I think you're required to
2 address it then. And if it is a violation of ethics, I
3 think that you have -- you have to report it, as difficult
4 as that may be to do.

5 Q. Thank you. Judge Willingham, the Commission
6 received a 136 ballot box surveys regarding you, with 18
7 additional comments, two of which indicated concerns. The
8 ballot box survey, for example, contained the following
9 positive comments:

10 "I have appeared as an attorney in front of
11 Judge Willingham on several occasions. He was always very
12 respectful of the litigants, especially the pro se
13 litigants and the attorneys. He was prepared and very
14 knowledgeable about the law. He also seemed very
15 compassionate."

16 Another comment stated, "Judge Willingham has
17 the experience as a prosecutor and magistrate that is
18 needed on the Circuit Court bench. He is quick and
19 thoughtful in his decision-making during cases. He has
20 proven that he has the ability to effectively manage a
21 docket. He has compassion for all litigants and their
22 lawyers. He would be an excellent circuit court judge."

23 Two of the written comments expressed concern.
24 One comment related to your attitude on the magistrate
25 court bench. What response would you offer to this

1 **concern?**

2 A. That is it a serious concern to me. I try to
3 treat people like I want to be treated. I strived very
4 hard to treat people with respect. Because I think if you
5 treat people with respect, they give you the respect back.
6 Any time that you -- especially in civil court, you have
7 two parties there, they're going to be -- one side or the
8 other's not going to be happy when they leave at the end
9 of the day. A lot of times both sides aren't happy.

10 But I try my best to explain to them, the reason
11 I made my decision, based as far the legal issues that
12 have come up, or the credibility issues that I have with
13 the case. So they may not leave happy, but I hope they
14 leave understanding what's going on.

15 If someone left my courtroom thinking I had an
16 attitude, then I have failed in that regard. I try my
17 best to treat everyone with respect. And the fact that
18 there's even one -- out of all the cases that I've had,
19 there's even one person that feels that way, then that is
20 of serious concern for me.

21 **Q. Thank you. Judge Willingham, the second comment**
22 **expressed concern with a lack of civil practice**
23 **experience. What response would you offer to this**
24 **concern?**

25 A. Nine years ago I would have agreed with them.

1 Nine years ago -- a little over nine years ago, nine and a
2 half years ago, I was a -- the deputy solicitor in
3 Spartanburg and in Cherokee County. I had thirteen years
4 of criminal experience and very limited civil experience
5 from the solicitor's office.

6 I knew I wanted to be a circuit court judge. I
7 knew that if I wanted to be a circuit court judge, and I
8 came here with only criminal experience, I wouldn't
9 consider myself qualified.

10 So what I did when the opportunity came to be a
11 magistrate, I took that opportunity. People thought I was
12 crazy. I had one of the best jobs in the state. I could
13 pick and choose any case in the office to try, and not
14 have to worry about the politics that the elected
15 solicitor had to -- had to deal with.

16 But I knew that I wanted to be a circuit court
17 judge. And so when a -- the opportunity came to be a
18 magistrate, they assigned me to the civil division, where
19 I had presided over civil cases again for the past nine
20 and a half years.

21 On jury trial weeks, I qualify the jury, I
22 managed the docket, calls that we have three times a day.
23 I handled all the dispositions. If their case is to be
24 tried, I either assigned it to myself or another civil
25 judge or a criminal side, assign them to other judges

1 there.

2 On non-jury trial weeks we have -- I'm not doing
3 bench trials, I'm doing civil cases everyday. I realize
4 that magistrate's court is different than circuit court.
5 I realize that there are significant differences between
6 the two. But the rules are the same. The rules of
7 procedure, the rules of evidence, those are all on the
8 same -- the same causes of action, just on a grander scale
9 in the circuit court.

10 **Q. Thank you. Judge Willingham, you indicated in**
11 **your PDQ, that a lawsuit was filed against you in October**
12 **of 1999, in the Cherokee County Court of Common Pleas, by**
13 **an inmate named Robert Holland Koon. Would you please**
14 **explain the nature and the disposition of the lawsuit.**

15 A. Robbie Koon was a career burglar in Cherokee
16 County. He had been prosecuted for a number of burglaries
17 prior to my arriving as a -- as a resident solicitor in
18 Cherokee County. He actually broke into -- he was on
19 parole from one of the earlier burglaries. He actually
20 broke into the Cherokee County Probation, Pardon and
21 Parole Service office, and stole his probation file.

22 We noticed him, that he was -- if was convicted,
23 based upon his prior record under 17-25-45, the "Three
24 Strikes and You're Out" law, that if he were convicted
25 we'd be seeking life without parole.

1 He was convicted, and the judge did sentence him
2 to life without parole. After which, he sued me. He sued
3 his lawyer. He sued the judge. He sued the Attorney
4 General. He sued the director of the Department of
5 Corrections. He sued Justice Beatty -- which to this day,
6 I don't know why, 'cause he had nothing to do with that
7 case.

8 That lawsuit was never served on me. But I kept
9 up with it, because he was wanting ten million dollars and
10 all my future earnings -- which would never amount to ten
11 million dollars. But that case was ultimately removed to
12 federal court where it was dismissed for lack of merit.

13 **Q. Thank you. Judge Willingham, you also indicated**
14 **in your PDQ, that there was lawsuit filed against you in**
15 **2012, in the U.S. District Court for the District of South**
16 **Carolina, by a prisoner named Ed Garnado Valardo [ph].**

17 A. Yes.

18 **Q. Please explain the nature and disposition of**
19 **that lawsuit.**

20 A. That was a -- that was a drug prosecution in
21 Spartanburg County. He was charged with trafficking of
22 crack cocaine on warrants. We directly indicted him, not
23 only for the trafficking of crack cocaine, but a count two
24 which was a possession of a firearm during the commission
25 of violent crime. He ended up pleading on those

1 indictments.

2 Because it was a direct indictment we dismissed
3 the original charging warrants. He gets to prison. He
4 looks at his file, and he sees that those warrants that he
5 was originally -- originally arrested on were dismissed,
6 and therefore, he thought he should not have been
7 prosecuted, should never have plead guilty to those direct
8 indictments.

9 So again, he sued me. He sued the investigator.
10 He sued Judge Cohl. And that case was also dismissed for
11 lack of merit.

12 **Q. Thank you. And a few housekeeping issues.**
13 **Judge Willingham, since submitting your letter of intent**
14 **have you sought or received the pledge of any legislator,**
15 **either prior to this day or pending the outcome of your**
16 **hearing?**

17 A. No, ma'am.

18 **Q. Have you asked any third parties to contact**
19 **members of the General Assembly on your behalf, or are you**
20 **aware of anyone attempting to intervene in this process on**
21 **your behalf?**

22 A. No, ma'am.

23 **Q. Since submitting your letter of intent to run**
24 **for this seat, have you contacted any members of the**
25 **commission about your candidacy?**

1 A. No, ma'am.

2 **Q. Do you understand that you are prohibited from**
3 **seeking a pledge or commitment, directly or indirectly,**
4 **until 48 hours after the formal release of the**
5 **Commission's Report, and are you aware of the penalties**
6 **for violating the pledging rules?**

7 A. Yes, ma'am.

8 MS. BROGDON: I would note that the Upstate
9 Citizens Committee reported that Judge Willingham was well
10 qualified in the evaluative criteria of ethical fitness,
11 professional and academic ability, character, reputation,
12 experience, and judicial temperament, and qualified in the
13 remaining evaluative criteria of constitutional
14 qualifications, physical health and mental stability. I
15 would note for the record that any concerns raised during
16 the investigation regarding the candidate were
17 incorporated into the questioning today.

18 Mr. Chairman, I have no further questions.

19 SENATOR CAMPSER: Thank you. Any questions
20 for Mr. Willingham? Senator Malloy.

21 SENATOR MALLOY: Thank you.

22 EXAMINATION BY SENATOR MALLOY:

23 **Q. Judge, good to see you. I appreciate you**
24 **staying late.**

25 A. Yes, sir.

1 **Q. This is somewhat unusual. And I know we're**
2 **supposed to leave early, so we appreciate you being here.**

3 I wanted to talk to you a bit about your comment
4 **as it relates to a priority in court --**

5 A. Yes, sir.

6 **Q. -- with criminal and civil.**

7 A. Yes, sir.

8 **Q. Do you believe that there is priority in hearing**
9 **criminal cases before civil cases?**

10 A. I do. And the reason I say that is because the
11 longer a case is delayed, the longer justice is had,
12 whether that be for the defendant, whether that be for the
13 victim. So I think those have to be prioritized. I think
14 when you have someone that is incarcerated, they're
15 sitting there, pretrial incarceration, presumed to be
16 innocent, and they're having the languish in jail until we
17 make that case a priority and bring it up for resolution.
18 Whether that be through negotiations with solicitor's
19 office and defense bar, or whether that be a resolution
20 through the trial.

21 The civil cases, they have to be resolved as
22 well. But if you're asking me, which you did, between the
23 two --

24 **Q. I was going back to your statement. And your**
25 **statement was that you would rank one higher than the**

1 other.

2 A. I would think that I would rank the incarcerated
3 individuals at the top of the priority podium.

4 Q. As a judge?

5 A. Yes.

6 Q. And you would do that even if there is a civil
7 case that may have a scheduling order, may had a day for
8 trial, may have someone's financial well being that was
9 still in dispute, and so we have a -- we have a civil
10 trial and a criminal trial -- I'm just trying to make
11 certain that when I see a person who wants to sit on the
12 bench in South Carolina, and they're ranking case higher
13 priority than another, that just -- maybe I'm wrong. But
14 that concerns me.

15 A. Well, I think it's a legitimate concern. If
16 there is a case that already has gone through and has a
17 scheduling order, than that has the priority track. You
18 wouldn't necessarily -- it would not be bumped for
19 additional criminal cases. But the way I understand it
20 is, you're either assigned to general sessions court or
21 you're assigned to common pleas court. You can have the
22 current jurisdiction do both, but you have a priority of
23 what you're going to do that week. And if your priority
24 is the criminal cases, then you are trying criminal court.

25 Q. And I understand that. I was just going over

1 your comment earlier in your statement, to say that one is
2 higher than the other, and that sometimes it may not be a
3 scheduling order, it may be just a -- it could be a small
4 case in dollar value, but a big case to that individual.
5 Maybe that person has been out of work for a period of
6 time from an accident or something, and they need to have
7 their case resolved, one way or another, so they can get
8 their -- so they can get their day in court.

9 And I'm just trying to see -- I just want to be
10 -- concerns that when a person that's been working in the
11 criminal arena for a period of time in solicitor's
12 offices, is that there's an inclination to have priority
13 over a -- over one case over another. And I just want to
14 make sure that's -- that, that's something you -- that you
15 consider.

16 A. Yes, sir.

17 Q. So let's go back for the last five years. I
18 mean, you said there was -- I mean, I think you said nine
19 years ago you would have said that you didn't have the
20 requisite civil experience.

21 A. Yes, sir.

22 Q. And you made comments about what you've done to
23 get yourself ready over the last nine years.

24 A. Yes, sir.

25 Q. Have you tried cases, from start to finish, from

1 a -- in a jury trial for civil cases in the last nine
2 years?

3 A. Every other week. Yes, sir.

4 Q. Every other week?

5 A. We have jury trials every other week.

6 Q. I'm talking about as -- as a lawyer.

7 A. As a judge.

8 Q. As a lawyer.

9 A. As a lawyer, I tried one in the solicitor's
10 office. We had one case, it was a nuisance case, that as
11 a representative of the State, I represented the sheriff,
12 I represented the solicitor -- tried it too. But that was
13 -- that was in the solicitor's office. That was prior to
14 my time on magistrate's court bench.

15 Q. But as a -- as a lawyer -- as a lawyer, on one
16 side or the other, maybe you haven't had the opportunity.
17 Is it fair to say that you've never tried a civil case
18 from start to finish from -- to a jury verdict?

19 A. No, sir, that's not fair. I did try that case
20 in the solicitor's office.

21 Q. In the solicitor's office.

22 A. Yes, sir. It was -- it was a common pleas case
23 on a nuisance action. We were shutting down the
24 Tradewinds Bar in Cherokee County, as a public nuisance.

25 Q. And that's a -- and that was a jury of twelve?

1 A. Yes, sir.

2 Q. **And what was the verdict?**

3 A. We shut it down.

4 Q. **Shut it down.**

5 A. Yes, sir.

6 Q. **So it was just a decisive action.**

7 A. Yes, sir.

8 Q. **And I guess you've been in the solicitor's**
9 **office and you've been in the -- in the magistrate's**
10 **court.**

11 A. Yes, sir. I left -- when I graduated law
12 school, I worked for a year for a circuit court judge,
13 Judge Clary, who's now in the Legislature. I left there
14 and went straight to the solicitor's office, where I
15 worked for thirteen years. I got a phone call on a
16 Tuesday night, wanting to know if I wanted to be a
17 magistrate's judge. I never had considered it, but knew,
18 as I said before, I needed to have civil experience that I
19 did not have.

20 The understanding and the agreement was they
21 would put me down in the civil division, one, to gain that
22 civil experience; and, two, so I wouldn't look like the
23 saint's advocate coming straight from the solicitor's
24 office into the criminal side on the magistrate's court.

25 I have handled those civil cases daily for the

1 last nine and a half years.

2 **Q. In the magistrate's court.**

3 A. Yes, sir.

4 **Q. How many jury strikes in magistrate's court now,**
5 **as a civil case?**

6 A. Six and six.

7 **Q. Six. Is that the same in circuit?**

8 A. No, sir.

9 **Q. The circuit is what: Four?**

10 A. The circuit you have -- you pull a list of
11 twenty and you strike down to twelve.

12 **Q. And so the -- have you thought about what**
13 **criteria you would use in the circuit court for -- to seal**
14 **any records or to close out any hearings?**

15 A. I think our courts should be open. I cannot
16 imagine a situation that you would close a courtroom. I
17 know those situations have been asked for, especially when
18 you have minors that are -- that are testifying.

19 But again I think the preference is always to
20 have open courtrooms. And in those situation with minors,
21 there are other avenues there to protect their identity
22 and keep them safe in the courtroom. I would not be in
23 favor of shutting courtroom, or sealing records for that
24 matter.

25 **Q. So tell me your -- tell me your most proud legal**

1 moment whether as a -- as a judge or as a solicitor,
2 lawyer. What do you reflect back over your many years of
3 practice, and say this is a moment that you want to share
4 with us? And then maybe then you can go into a -- your
5 most proud personal moment.

6 A. Proud, I guess, legal moment, you know, I've
7 handled a number of different cases, both in magistrate's
8 court and my time in the solicitor's office. If I had to
9 pick one, which you're asking me to do, I would pick the
10 State versus Wanda Mullinax. Wanda Mullinax killed her
11 husband, Christmas night. She was then charged -- she
12 then turned and shot herself, and claimed that her husband
13 had shot her, had gone into the bedroom and committed
14 suicide.

15 That fact situation did not work. The reason
16 that's probably one of most memorable moments is not
17 necessarily because of the facts of the case, or the
18 conviction that was ultimately received, it's because I
19 was going up at the time against John Delgado and Bill
20 Nettles. And John Delgado had taught me trial advocacy in
21 law school. And so it was the student going up against
22 the teacher.

23 And I was -- the first time we tried it, it was
24 to a -- to a hung jury. The second time we tried it, I
25 was able to get a guilty verdict. So that is a -- is a

1 memorable moment for me. As far as a personal -- the best
2 memorable time are the birth of my three daughters.

3 **Q. How old are you daughters?**

4 A. My oldest daughter is 18; she's a freshman at
5 Wofford. My middle daughter is in the tenth grade. And
6 my baby is 8 years old, and she's in the second grade.

7 **Q. That's all.**

8 A. Thank you.

9 SENATOR CAMPSSEN: Representative
10 Rutherford.

11 EXAMINATION BY REPRESENTATIVE RUTHERFORD:

12 **Q. Judge, since you've come out of law school, have**
13 **you ever had a client?**

14 A. Other than the State of South Carolina, no, sir.

15 **Q. And, you know, it's hard to ask the other**
16 **question, 'cause it does concern me, that when somebody is**
17 **trying to achieve the position of a circuit court judge,**
18 **without ever having represented anyone in front of any**
19 **tribunal. What about in law school, did you do one of**
20 **those trial prep courses we --**

21 A. I took every trial ad client that was available.
22 Because I knew I wanted to be a litigator at the time. I
23 wanted to be on my feet.

24 **Q. All right. No further questions.**

25 SENATOR CAMPSSEN: Any other questions? Mr.

1 Safran.

2 EXAMINATION BY MR. SAFRAN:

3 Q. Good evening, now.

4 A. Yes, sir.

5 Q. Let me first say I've looked at the responses
6 that we've gotten from the ballet box, and obviously
7 you've got a lot of people who feel very comfortable in
8 terms of how you handle things. You present well. You've
9 got good academic background. You worked for, you know, a
10 very good judge out of law school.

11 Is it safe to say that, basically as solicitor,
12 you pretty well controlled your docket and controlled your
13 calendar, okay?

14 A. And I agree that it was, yes, sir.

15 Q. I understand. But more or less, you were the
16 one that kind of choice when to do cases and how to
17 proceed.

18 A. Yes, sir.

19 Q. As a magistrate you effectively kind of do the
20 same thing.

21 A. I still do the same thing. Yes, sir.

22 Q. All right. And I guess, as you've heard
23 questions from others, you've never really been out in a
24 private practice, whether it be one that would have done
25 criminal or civil or a combination of it.

1 A. That's correct.

2 Q. And I guess what I'd like to hear is, how do you
3 respond to a large segment of the Bar who might say, "How
4 can he empathize with what's going on with us, how we have
5 to balance schedules, how we have clients that we have to
6 more or less deal with, satisfy," when basically you've
7 effectively worked for the state in every aspect since you
8 left law school?

9 I mean, can you truly empathize with those, in
10 terms of deadlines, in terms of demands, without ever
11 having been in that out -- that element?

12 A. Yes, sir, I think -- I think I do. I think I've
13 done that, like I said, every day for the past nine years.
14 We're in control of the civil docket. That is something
15 that I am very proud of.

16 When we -- when I started we had a huge backlog
17 of cases. I had a tried a case, yesterday, that was filed
18 August 2nd. So we have made significant headway in those
19 -- in those backlog of cases.

20 I understand the headaches of scheduling. I
21 understand the other priorities that lawyers have.
22 Magistrate's court is the lowest rung of court in our
23 court system. Anytime that other lawyers have cases in
24 circuit court, in federal court, wherever, family court,
25 that takes priority over us. So I am aware of what it

1 takes to get a case ready.

2 I am aware that there -- a lawyer has a ton of
3 obligations, not just to be in court. I am aware that
4 lawyers are probably losing money trying cases in a
5 courtroom versus resolving the cases and working in the
6 office. I am aware of all those factors. I am -- and I
7 do my best to work with every lawyer that has come
8 through. And I think the comments are a testament that I
9 do try with them.

10 **Q. Let me switch gears a little bit. As a**
11 **solicitor -- and I'm not in any way trying to limit just**
12 **how much a solicitor has to work, and how much they have**
13 **to be aware of controlling authorities. But basically,**
14 **it's trying cases, understanding the rules of evidence,**
15 **and more or less getting results.**

16 It's not a tremendous amount of having to go do
17 the legal research, because a lot of what you get is
18 repetition. I'm sure it comes up, but it's not -- it's
19 more the exception rather than the rule. Is that a fair
20 statement?

21 A. Maybe. But not for me.

22 **Q. Okay.**

23 A. And the reason I say that is because anytime I
24 tried a case, I try it from the prosecution perspective --
25 these are my witnesses, these are my -- check each one of

1 them off.

2 But I think to be a good prosecutor, or a good
3 litigator, for that matter, whether you're doing
4 prosecution or defense, you have to anticipate what the
5 other side may do. And so I did a tremendous amount of
6 research that was not the same every time. Because I
7 would come up with potential issues and arguments, because
8 I had to be prepared when the defense bar raised that.

9 So I don't know that -- there may be prosecutors
10 out there that is -- you know, one right after the other,
11 the whole mill of one case right after another; it's the
12 same thing, you're just changing the faces of the
13 witnesses. But that's not what I did.

14 Q. Okay. Fair enough. Let me ask you again along
15 those same lines, as far as what you're doing in the
16 magistrate's court, obviously there's a cap in terms of
17 what the value of a case is.

18 How do you feel like you're going to be -- from
19 a stand point of capacity of ability to transition into
20 what a circuit judge is going to have to do dealing with
21 legal issues, you know, having to more or less get into
22 more depth in the areas that unfortunately because of just
23 the nature of what your practice has been working in the -
24 - in the capacity that you have, different new for you.

25 A. Sure it is.

1 **Q. How do you anticipate, you know, your**
2 **transitioning of that?**

3 A. I work hard. I work hard to do the legal
4 research, to understand the issues, to understand the
5 causes of action. I harken back to my first time in -- my
6 first week in magistrate's court. I started on Monday, I
7 was trying my first civil jury case on Tuesday. That was
8 outside of my comfort zone. Because the only civil law I
9 knew was what I'd learned in law school.

10 Luckily, I paid attention fairly well there. So
11 but I worked hard to overcome that deficiency, and the
12 deficient. And any time that I had a deficiency, or a
13 deficiency that I recognized, I worked hard to the
14 research, to talk to fellow judges, to -- to get guidance
15 from other folks that have been there before me, so I can
16 effectively do that job.

17 **Q. Thank you very much.**

18 A. Yes, sir. Thank you.

19 SENATOR CAMPSSEN: Representative Smith.

20 EXAMINATION BY REPRESENTATIVE SMITH:

21 **Q. Judge Willingham, I just -- I think what I'm**
22 **hearing -- and I just wanted to lay it out here, because**
23 **this is obviously a concern that's being discussed over**
24 **here, is you've practiced in the solicitor's office. And**
25 **I was a public defender and I understand those are**

1 probably some of the toughest jobs there are. Whether
2 you're defending a case, or you're prosecuting a case,
3 it's -- it's -- it's intense trial work. And you've got
4 the demands of a victim, you've got the demands of police
5 officers, and you've got to balance that. And now you're
6 a judge.

7 And I think the concern that I'm hearing -- and,
8 you know, I share in some of this is -- you know, you
9 haven't had a private practice, and so you don't know --
10 you know, you haven't had a judge telling you you've got
11 to be in this court on that date, and you got a deposition
12 that's got to be done this time, and you've got -- you
13 know, you've got fifty or sixty clients, and you get the
14 judge that we've all run into in our career, that says, "I
15 don't care what your excuse is, you're going to be in
16 courtroom. This case can be continued. I won't sit her
17 to have cases continued. I will sit here to try cases and
18 putting the lawyers in the bad position."

19 And, you know, I kind of want you to talk to me
20 a little bit about your philosophy in that, how you will
21 work with lawyers, and kind of lay some concerns that you
22 haven't had that the -- probably I know you would have --
23 you've been on the receiving end of an abusive judge. All
24 of us sitting around here have been.

25 But what I'm more concerned about is not

1 understanding the predicament that someone that's working
2 in a law firm and is trying to juggle a number of balls
3 and a number of cases faces everyday, especially when you
4 got a judge that has -- that says my docket and the
5 movement of my docket is an A-number one priority and I
6 don't care whether you're on vacation this week or what
7 happens.

8 And I mean, I can just tell you stories, and
9 we've all seen them around here, of judges who have taken
10 the position. And we just need to understand how you're
11 going to balance that real life experience that someone
12 brings to the bench with them that you have not had thus
13 far.

14 A. Yes, sir. I understand that concern. And let
15 me assure you I am not that judge. I work diligently not
16 to -- because like you said I've been in front of those
17 judges. And I've learned from the good judges and I've
18 learned from the bad what not to do. When we have -- we
19 have a docket and we -- on the criminal side we take the
20 oldest to newest and try and do the same thing on the
21 civil side. You work the oldest to newest cases.

22 Conflicts come up. Other things come up. Other
23 issues. Other priorities come up. And I understand that.
24 I get that. Even though I never was in a private
25 practice, that's without dispute. I have not been in that

1 situation. But I understand what that's like. Because we
2 had the same situation in the solicitor's office. Judge
3 Markley Dennis said, "You're going to try this case on
4 this day. And if you don't, I'm going to let the guy out
5 of jail."

6 Well, you drop everything and you come in and
7 you try that case. So I understand that. That is not the
8 type of a judge that I have been. That's not the type of
9 judge that I will be.

10 Folks come into my courtroom and they will ask
11 for continuances. And I am very generous in granting
12 those, if it's for a good reason. I granted a first
13 continuance for a good reason or a bad reason, because I
14 understand there are other things that are going on in
15 that practice or in that client's life.

16 If it's not an abuse and it's not a repeated-
17 type situation, then I honor that -- those requests. It's
18 not "you're going to me in my courtroom or else." That is
19 not how I've ever operated my courtroom.

20 **Q. It certainly -- and I've asked every judicial**
21 **candidate, so I'm not picking on you about this --**
22 **cause, you know, one of my big issues is quality of life**
23 **for attorneys. And quality of life, as we all know, can**
24 **be very difficult when you maintain a hectic schedule and**
25 **case load. And judges can exacerbate those problems.**

1 And so I want everyone -- I want the peoples
2 perspective as they're coming here to talk to us about,
3 you know, how they will balance attorneys who have family
4 vacations or other obligations that are outside the law,
5 and how you would balance that, viz a viz a docket that's
6 got to get moved, or a solicitor over there or a public
7 defender saying, "Judge, my client wants to get out of
8 court," or a solicitor that says, "My victim wants
9 justice" and somebody's got, you know, something going on
10 with their child, or a vacation planned.

11 And inevitably you've probably seen that in the
12 Solicitor's Office. You get in those fights, and they
13 say, "Well, Judge, they shouldn't have been doing this.
14 They knew this term of court was coming -- whichever way -
15 - whoever's making that demand, how do you balance that?"

16 A. I am very cognizant of that. As I said, I've
17 got three daughters of my own, so I know how important
18 that is. And I'm very easy to work with. Maybe I'm not
19 coming across that way, but I am. And it's one of those
20 things if you let us know ahead of time, we won't even put
21 you on the docket. It's when you come in on Monday, and
22 we have a trial on Tuesday, and you say, "Oh, yeah, Judge.
23 I've got to go somewhere else."

24 That is tougher to explain -- that's tougher to
25 explain to the other side -- whether it be a civil case or

1 a criminal case, that's tough to explain that, why are
2 they waiting until the absolute last minute to it. If we
3 have ample notice, we do everything we can to accommodate
4 everyone's schedule.

5 **Q. Okay. Thank you, Judge.**

6 SENATOR CAMPSSEN: Any other questions?

7 (Hearing none.)

8 SENATOR CAMPSSEN: Judge Willingham, thank
9 you so much for being with us this evening.

10 JUDGE WILLINGHAM: Thank you, sir.

11 SENATOR CAMPSSEN: That concludes this
12 portion of the screening process. As you know the record
13 will remain open until the formal release of the report of
14 qualifications, and you may be called back at such time if
15 the need arises.

16 I thank you for offering. And thank you
17 for your service to South Carolina.

18 JUDGE WILLINGHAM: Thank you, Mr. Chairman.
19 Thank you, members of the Commission.

20 (Candidate excused.)

21 SENATOR MALLOY: I move to go into
22 executive session.

23 SENATOR CAMPSSEN: Do I have a second? We
24 have a motion and a second to go into executive session.
25 We will receive advice of Counsel. Any discussion?

1 (Hearing none.)

2 SENATOR CAMPSSEN: Being no discussion, move
3 immediately to a vote. All in favor indicate by saying
4 "aye."

5 (At this time the members audibly say "aye.")

6 SENATOR CAMPSSEN: Opposed?

7 (Hearing none.)

8 SENATOR CAMPSSEN: The ayes have it.

9 (Off the record from 7:23 p.m. to 8:06 p.m.)

10 SENATOR CAMPSSEN: Okay. We have lifted the
11 veil and come out of executive session. We had no votes
12 taken, no action taken. And now we're back on the record.
13 And Judge Tripp Anderson is before us.

14 And, Ms. Brogdon, do you have some -- yeah.

15 Judge Anderson, if you would please raise
16 your right hand and I'll swear you in.

17 WHEREUPON:

18 THE HONORABLE RALPH K. "TRIPP" ANDERSON
19 III, being duly sworn and cautioned to speak the truth,
20 the whole truth and nothing but the truth, testifies as
21 follows:

22 SENATOR CAMPSSEN: Okay. Judge Anderson, we
23 would like to ask you -- or Ms. Brogdon's going to ask you
24 a series of questions that are precipitated by a
25 communication that an attorney has sent out, with regards

1 to the race that you are a candidate in. And so we have
2 brought you back before the Commission, to ask some
3 questions with regard -- regarding whether you had any
4 knowledge of this, or any involvement in -- in this --
5 this communication that was advocating for your election.
6 Ms. Brogdon.

7 EXAMINATION BY MS. BROGDON:

8 Q. Good evening, Judge Anderson. Judge Anderson,
9 you are here for questioning regarding a potential
10 violation of South Carolina code, Section 2-19-70, which
11 provides that violations of that section are a
12 misdemeanor, and upon conviction the violator must be
13 fined not more than one thousand dollars, or imprisoned
14 not more than 90 days.

15 Because of the criminal nature of the potential
16 violation under the statute referenced above, do you
17 understand that you have a right against self-
18 incrimination, and are -- and the right to an attorney?

19 A. Yes, ma'am.

20 Q. Do you freely and voluntarily waive your right
21 against self-incrimination and your right to counsel?

22 A. Yes, ma'am.

23 Q. Judge Anderson, you have before you a letter
24 that Mr. Burnett R. Maybank III, e-mailed to what appears
25 to be a group of administrative law lawyers. Were you

1 **aware that Mr. Maybank was sending this e-mail?**

2 A. No.

3 **Q. Did you, or anyone acting on your behalf, have a**
4 **conversation with Mr. Maybank, about sending this e-mail?**

5 A. No. I had -- we had discussed -- I'm in an
6 organization called SCARLA, the South -- concerning
7 regulatory lawyers. And it was brought up in that
8 meeting, that Mr. Maybank may send out a list serve -- and
9 I didn't know what a list serve was -- to let people know
10 about upcoming events in my race. But I -- other than
11 that, no, I'm not -- I haven't been involved in -- in it
12 at all.

13 **Q. Did you, or anyone acting on your behalf, direct**
14 **Mr. Maybank to send that e-mail?**

15 A. I didn't even -- no, I didn't even know about
16 this e-mail. I'll even tell y'all, I talked to Mr.
17 Maybank today. His father died. And I called him up to
18 tell him how -- that I was sorry to hear about that. We
19 never even -- I never even told him that I'd been a --
20 nominated. We didn't discuss it.

21 **Q. Thank you, Judge Anderson.**

22 A. I don't know, did it go out today? Or whenever
23 it went out...

24 SENATOR CAMPSSEN: It's dated November the
25 16th, today.

1 Q. Judge Anderson, I spoke with Mr. Maybank this
2 afternoon, and he indicated that he also mailed a letter
3 to members of the General Assembly regarding your
4 candidacy. We do not have a copy of that letter. Were you
5 aware that Mr. Maybank was sending a letter regarding your
6 candidacy to members of the General Assembly?

7 A. No.

8 Q. Did you, or anyone acting on your behalf, have a
9 conversation with Mr. Maybank about sending a letter to
10 the General Assembly regarding your candidacy?

11 A. He sent one last time, in my last race, but he
12 properly did it after the time frame that I'm -- but he
13 did it two or three days after the -- the time frame to
14 get commitments. I don't know if I talked to him about --
15 I don't think I talked to him even about that.

16 The only thing that I could have ever had in my
17 mind, that he would do, it would be to do what he did last
18 time, and the proper procedures. But not to send a letter
19 out right now. So no, absolute not.

20 Q. Did you, or anyone acting on your behalf, direct
21 Mr. Maybank to send a letter to the General Assembly,
22 regarding your candidacy?

23 A. No.

24 MS. BROGDON: Mr. Chairman, those would be
25 the only questions that I have for Judge Anderson.

1 SENATOR CAMPSEN: Any other members have
2 any questions?

3 (No response.)

4 SENATOR CAMPSEN: Would you like to make
5 any additional statement, Judge Anderson?

6 JUDGE ANDERSON: I didn't know anything
7 about this. I almost -- was so shocked, I almost fell out
8 of my wheelchair when I -- when I heard about it. I don't
9 want -- I like Mr. Maybank, but -- I don't want to say it
10 was absurd, but it -- close to it. This is shocking.

11 SENATOR CAMPSEN: Okay. Thank you. We
12 will stand in -- Judge Anderson, have you talked to Mr.
13 Maybank since the e-mail was sent out?

14 JUDGE ANDERSON: No, I wasn't -- I wouldn't
15 dare have wanted to do that, because I -- when I heard
16 about this, I knew I needed to come over and address
17 y'all.

18 SENATOR CAMPSEN: All right. Thank you.
19 Thank you, Judge Anderson. I'll entertain a motion that
20 we -- that we stand in recess. There may be some
21 communications coming back from some candidates.

22 So we have a motion. A second. Any
23 discussion?

24 (No response.)

25 SENATOR CAMPSEN: There being no

1 discussion, we'll move immediately to vote. All in favor
2 indicate by saying "aye."

3 (At this time the members audibly say "aye.")

4 SENATOR CAMPSSEN: Opposed?

5 (No response.)

6 SENATOR CAMPSSEN: The ayes have it.

7 (EXHIBIT NO. 1 - E-MAIL FROM BURNET R.

8 MAYBANK, III DATED NOVEMBER 16, 2016)

9 (Off the record from 8:14 p.m. to 8:33 p.m.)

10 MR. CHAIRMAN: We have now convened,
11 arising from our recess. And we'll now cast votes for the
12 Circuit Court Seat -- 7th Circuit, Seat No. 2. And we
13 have had one candidate who has withdrawn, and that is --
14 okay. We have had one candidate withdraw. And I don't
15 think we need to go over the voting process again, 'cause
16 I think everyone's done it a few times. And so you'll
17 have staff -- we will call the roll. Ms. Brogson.

18 MS. BROGDON: So I'll begin calling out the
19 order to find if the candidate's qualified or not. The
20 first candidate is Grace Gilchrist Knie. Please raise
21 your hand if you want to find her qualified.

22 (Commission members cast their vote.)

23 MS. BROGDON: The next candidate is the
24 Honorable James Donald Willingham, II. Please raise your
25 hand if you want to find him qualified

1 (Commission members cast their vote.)

2 MS. BROGDON: That's ten votes in favor of
3 Judge Willingham being found qualified. We now will move
4 to a vote for qualified and nominated. I'll call the
5 names in alphabetical order again. Raise your hand if you
6 want to find the candidate nominated

7 Grace Gilchrist Knie.

8 (Commission members cast their vote.)

9 MS. BROGDON: That's ten votes to find
10 Grace Gilchrist Knie nominated. The next candidate is The
11 Honorable James Donald Willingham, II. Please raise your
12 hand if you want to find him nominated.

13 (Commission members cast their vote.)

14 MS. BROGDON: And that's ten votes to find
15 Judge Willingham nominated. So the two candidates
16 nominated, with ten votes each, are Grace Gilchrist Knie
17 and The Honorable John Donald Willingham, II.

18 SENATOR CAMPSSEN: Okay. There being no
19 matters before the Commission, we've completed our work
20 for today, so I would entertain a motion for adjournment.

21 REPRESENTATIVE BANNISTER: So moved.

22 SENATOR CAMPSSEN: I have a motion. Do we
23 have a second.

24 SENATOR MALLOY: Second.

25 SENATOR CAMPSSEN: A second. Any

1 discussion?

2 (Hearing none.)

3 SENATOR CAMPSEN: No discussion. We'll
4 move immediately to a -- yeah, we will -- we will
5 reconvene Tuesday, November the 29th at 9:30.

6 (There being nothing further, the proceedings
7 concluded at 8:45 p.m.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

I, PATRICIA G. BACHAND, COURT REPORTER AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA AT LARGE, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT CONSISTING OF 185 PAGES IS A TRUE, ACCURATE, AND COMPLETE RECORD TO THE BEST OF MY SKILL AND ABILITY.

I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR COUNSEL FOR, NOR RELATED TO OR EMPLOYED BY ANY OF THE PARTIES CONNECTED WITH THIS ACTION, NOR AM I FINANCIALLY INTERESTED IN SAID CAUSE.

IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS 10TH DAY OF DECEMBER 2016.

PATRICIA G. BACHAND, COURT REPORTER
MY COMMISSION EXPIRES APRIL 9, 2017